

THE
T R I A L
OF THE HON.

Col. *COSMO GORDON*,
OF THE
THIRD REGIMENT OF FOOT-GUARDS,

F O R
NEGLECT of DUTY before the ENEMY,
On the 23d of JUNE, 1780,
Near SPRINGFIELD, in the JERSEYS:

C O N T A I N I N G
THE WHOLE PROCEEDINGS
O F A
GENERAL COURT-MARTIAL,

Held at the City of NEW-YORK on the 22d of AUGUST,
and continued by several Adjournments to the 4th of SEP-
TEMBER, 1782.

L O N D O N :
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PROCEEDINGS, &c.

AT a General Court-Martial held at the city of New-York, in the province of New-York, on Thursday the 22d day of August, and continued by several adjournments to Wednesday the 4th of September, 1782, by virtue of a warrant bearing date the 21st instant, from his Excellency Sir Guy Carleton, Knight of the Most Honourable Order of the Bath, General and Commander in Chief of all his Majesty's forces within the Colonies lying on the Atlantic Ocean, from Nova Scotia to West Florida, inclusive, &c. &c. &c.

P R E S I D E N T.

Lieutenant General John Campbell.

M E M B E R S.

Brigad. General Alured Clerke

Brigad. General Andrew Bruce

Lieut. Col. Hon. Henry Fox, 38th Regiment

Lieut. Col. Charles Graham, 42d Regiment

Major Edward Tyre, 40th Regiment

Major Stephen Bromfield, 49th Regiment

Major Walter Hume, 42d Regiment

Brigad. General James Marsh

Lieut. Col. Nesbit Balfour, 23d Regiment

B

Lieut.

Lieut. Col. John Small, 84th Regiment
 Lieut. Col. Charles Brownlow, 57th Regiment
 Major Wm. J. Darby, 7th Regiment
 Major James Graham, 37th Regiment
 Major William Keppel, 82d Regiment

DEPUTY JUDGE-ADVOCATE.

Stephen Payne Adye Esq.

ASSISTANT DEPUTY JUDGE ADVOCATE.
 Lieutenant Richard Porter.

The President, Members, and Deputy and Assistant Deputy Judge Advocate, being duly sworn, the Deputy Judge Advocate addressed the Court, as follows :

“ Mr. President and Gentlemen,

“ The first (and perhaps the only) tryal I shall bring on before this court, is that of Colonel Cosmo Gordon, of his Majesty’s 3d Regiment of Foot Guards, on a charge, which shall be exhibited in proper time and place : but, antecedent to your entering thereon, I must beg leave to call your attention to two different circumstances which will arise in the course of this tryal, and which, being out of the common rule of proceeding at Courts-Martial, claim a previous explanation of the authority by which they are introduced.

“ In the 3d and 4th Articles of War of the 15th Section, it is declared to be the royal will and pleasure, that when any officers or soldiers of his Majesty’s Horse, Grenadier, or Foot Guards, are to be brought before a General Court-Martial, for differences purely arising amongst themselves, or for crimes relating to discipline,

discipline, or breach of orders; such Courts-Martial shall be composed of officers of those corps only: but in disputes or differences arising between officers or soldiers of the Horse or Foot Guards, and officers or soldiers of his Majesty's other troops, the Courts-Martial, in such cases, are to be equally composed of officers belonging to the corps in which the parties complaining, and complained of, do then serve.

" Under such restrictions it would undoubtedly astonish you, to see an officer of his Majesty's Foot Guards arraigned before a court composed entirely of officers of the line, did no explanation attend this novel mode of proceeding; and you might with equal reason express your surprise on finding the written evidence, standing on the minutes of a former Court Martial, produced here, and requested to be admitted and received as evidence on this tryal: but all doubts with respect to these two points, I have every reason to believe, will be removed on my laying before the court his Majesty's pleasure thereon, signified in the following extract of two several letters from Sir Charles Gould, his Judge Advocate General, to Sir Henry Clinton, the late Commander in Chief, and myself.

" If Colonel Gordon shall still be desirous,
 " that a judicial enquiry be made into the charge
 " which has been objected to him, and content,
 " as officers of the Foot Guards cannot be con-
 " vened for his tryal, that a Court Martial for
 " this purpose shall be composed of a compe-
 " tent number of officers belonging to his Ma-
 " jesty's other forces; and if, upon deliberate
 " and mature reflection, he shall adhere to the

B 2 " proposal,

" proposal; which appears by the said report,"
 [alluding to the report of a board of General
 Officers, mentioned in the former part of the
 letters] "to have been voluntarily made by
 " him, that the evidence, as it stands upon the
 " minutes of the late Court Martial, held for
 " the tryal of Lieut. Col. Thomas, he admitted
 " and taken as evidence upon *this* tryal:—It is
 " his Majesty's pleasure, that a general Court
 " Martial be convened for the tryal of Col.
 " Gordon, upon the charge above referred to,
 " namely, *not having done his duty before the*
" Enemy on the 23d of June, 1780; and that a re-
 " port of the proceedings of such Court-Martial
 " be transmitted to Great Britain, for his Royal
 " consideration.

" It may not be improper to explain, that this
 " admission of evidence by consent, is under-
 " stood to respect such witnesses only, who may
 " be deceased, or absent at the time of the tryal,
 " and not to exclude the examination of any,
 " who, being upon the spot, can give immedi-
 " ate testimony."

" This his Majesty's will and pleasure has been
 communicated to Col. Gordon, and his acquies-
 cence therein signified to me by letter; but, as
 he will have an opportunity of declaring his
 sentiments to you in person, I should presume
 that it is unnecessary to lay his letter before you."

" The Honourable Col. COSMO GORDON, of his
 " Majesty's third Regiment of Foot-Guards,
 came prisoner before the court; and the
 following charge was exhibited against him
 by the Deputy Judge Advocate, prosecuting
 in his Majesty's name, *viz.*

Not

*Not having done his duty before the Enemy on
the 23d of June, 1780:*

To which charge Col. Gordon having pleaded
“ Not Guilty,” the following witnesses
were examined, *viz.*

Lieut. Col. FREDERICK THOMAS, of his Ma-
jesty’s first Regiment of Foot-Guards, being duly
sworn, and desired to relate what he knew of
Col. Gordon’s not having done his duty on the
23d of June, 1780, deposed, That on the 23d of
June, 1780, the brigade of Guards marched
from Elizabeth-Town camp to Springfield, in
the Jersies, at or before day-break, under the
command of Col. Howard; the first battalion
was commanded by Col. Gordon, the second by
Col. Schutz; and the first company of the first
battalion was under his (the deponent’s) com-
mand, and led the column when the flank com-
panies were detached, which they were the
greatest part of the day. Between the hours of
nine and ten in the morning, the column under
Major General Matthew received his orders to
halt, in the road leading to Springfield, near an
orchard, in which Lieut. Col. Barton’s corps
were engaged with the Rebels, and his (the de-
ponent’s) company was ordered to their support:
the second company under the command of Capt.
Maitland soon afterwards joined them. As soon
as the firing from the Rebels had ceased, and
they had retreated, he ordered Serjeant Curtis,
of the second company, to go to Col. Gordon,
with his compliments, to represent to him their
situation, and to request his orders. Serjeant
Curtis returned, and reported to him (the de-
ponent) he could not find Col. Gordon; but that
he had seen Col. Howard, from whom he should
receive

receive orders. During the absence of Serjeant Curtis, he sent Serjeant-Major Jermain, of the first battalion, with a similar message to Col. Gordon, who reported to him he could not find him; but, previous to the return of Serjeant-Major Jermain, he received an order from Col. Howard, by Brigade-Major Collins, to join the brigade in the road, which he accordingly did: there was at that time a halt of the column for some few minutes; and being desirous of seeing the commanding officer of the battalion, he went through both battalions, but did not see Col. Gordon. On his return to his own company he saw Gen. Matthew and Col. Howard together, near the front of the column; he asked Gen. Matthew if he had seen Col. Gordon: he replied he had not, and immediately ordered the battalion to advance. The Rebels had gained the heights on their right, and, as they advanced along the road, began a heavy fire on them. He thought it necessary to send to the commanding officer of the battalion, for his orders: he therefore sent at different times Adjutant Wilson and Serjeant-Major Jermain, who both reported to him, they could not find Col. Gordon. At length Lieut. Col. Stewart came into the front, expressing his surprise, with great indignation, at Col. Gordon's absence, and ordered him to dislodge a party of Rebels from a bridge in front; which being very easily effected, he rejoined the battalion, and Lieut. Col. Stewart marched the first battalion, the second following, to the heights of Springfield, on which he formed it. When the brigade had been formed some few minutes, Col. Stewart ordered Adjutant Wilson to go to Gen. Matthew,

thew, or Col. Howard, for orders. As Adjutant Wilson was descending the hill, he (the Deponent) saw Col. Gordon ascending it, on foot, and out of breath. Upon his coming on the height, he mentioned to him his having been obliged to send so frequently to him. Col. Gordon replied, he had been waiting in the rear for orders.

Q. (from the Court.) Was the brigade of guards engaged with the enemy, any part of the day of the 23d of June, except that which he alludes to in the former part of his evidence?

A. It was not.

Q. After Col. Gordon ascended the heights of Springfield, (the two battalions of guards having some time before gained those heights, as already deposed) did Col. Gordon remain there?

A. He did not see Col. Gordon on those heights after their conversation; but he saw him sitting on a stone near the bottom of the hill.

Q. What space of time does he suppose to have intervened, between his being detached with his company into the orchard, and his seeing Col. Gordon ascend the heights of Springfield?

A. He believes it to have been about an hour.

Q. Does he recollect Capt. Maitland to have been present at the time he sent Serjeant Curtis for orders, and when Curtis returned with his report?

A. He recollects Capt. Maitland being present when the report was made by Serjeant Curtis, but does not recollect his (Capt. Maitland's) being present when he sent him.

Q. Does he know of Gen. Matthew, or any officer

officer in authority, from whom Col. Gordon could expect to receive orders, being then in the rear?

A. He does not know they were there; he did not see them himself.

Q. What loss did the brigade of Guards sustain that day?

A. He heard but of three men in the battalion; the brigade he cannot answer for; he saw two men of his own company wounded. Although there was a good deal of firing, he can easily account for the little effect it produced on the part of the enemy, as the eminence from whence they fired, was so perpendicular, that their direction rather carried the shot over the objects aimed at.

Q. What distance was the orchard, where Col. Thomas's company was engaged, from where the brigade halted?

A. He should suppose about three hundred yards; he cannot be particular.

Q. (from Col. Gordon.) Does he recollect any conversation that passed between Col. Howard and Col. Gordon, when the brigade of Guards was halted upon the heights of Springfield, relative to a piece of cannon playing on the brigade, how necessary it would be to change their position; and what Col. Howard said on the subject?

A. The conversation he alludes to, happened, he believes, in an orchard near Springfield (not upon the heights) some time after they quitted the heights.

Q. Does he know of the brigade of Guards being fired upon by the rebels, during the time he (Col. Thomas) was detached in the orchard?

A. They

A. They were ; but their superior fire soon drove the Rebels off.

Q. How long did the fire continue upon the brigade of Guards, between their advancing from the position where they had halted by order of Gen. Matthew; and their taking possession of the heights of Springfield ?

A. He should suppose it had lasted, with some intervals, near half an hour ; the firing was so extremely irregular, he cannot say particularly.

Q. What was the distance from the place where they halted, to the heights at Springfield ?

A. He should suppose, from half to three quarters of a mile.

Q. At the time he was engaged with his company in the orchard, did the two battalions of Guards come up to his support ?

A. There were two companies in the orchard ; the battalions remained in the road.

Q. (by Col. Gordon.) When he (Col. Gordon) took possession of the heights of Springfield, did he not tell him, he was called back by Gen. Matthew, to receive his orders, which occasioned his being towards the rear of the column ?

A. No ; Col. Gordon did not tell him any such thing ; he told him " he had been waiting in the rear for orders ;" he particularly recollects the expression.

Q. Did he (Col. Thomas) know, that at the time the brigade of Guards took possession of the heights of Springfield, the command devolved upon him (Col. Gordon), Col. Howard being absent, who was gone on a message to Col. Simcoe ?

A. He knew of Col. Howard's absence, but
C had

had never seen Col. Gordon, from the time he had gone into the orchard, till that moment.

Q. Did not Col. Thomas hear him (Col. Gordon) give orders, after taking possession of the heights, for the brigade to lie down upon their arms, under shelter of the bushes, it being excessive hot?

A. He heard no order given but one, which was given by Col. Stewart on the heights of Springfield; but such an order might have been given as he (Col. Gordon) alludes to.

Q. Did not the men of the brigade lie down upon their arms, under the shelter of the bushes?

A. They did.

Q. (from the Court.) As Col. Thomas has said he detached some Serjeants in search of Col. Gordon, did they on their return report to him where they had searched for Col. Gordon?

A. One of the Serjeants (the Serjeant-Major) reported to him, he had searched for Col. Gordon, but could not find him in the battalion; the other reported in general, he could not find Col. Gordon.

Q. At the time he and Col. Gordon, conversed on the heights of Springfield, and Col. Gordon told him he had been waiting in the rear for orders, did he see or know where Gen. Matthew was?

A. He did not.

Captain FREDERICK MAITLAND, of the first regiment of Guards, being duly sworn, was examined.

Q. (by the Court.) Was he (the Deponent) serving in the first battalion of Guards, on the 23d of June, 1780, when Lieut. Col. Thomas's company was detached into an orchard?

A. He was.

Q. Did he, at the time Col. Thomas's company was detached into the orchard, see Col. Gordon with the first battalion?

A. He does not recollect.

Q. Was not he (Capt. Maitland) some time after Col. Thomas was gone off, detached with the second company, to support Col. Thomas in the orchard?

A. He was.

Q. Did he see Col. Gordon at the time of his (Capt. Maitland's) being detached with the first battalion?

A. He did not recollect seeing him then.

Q. Who gave him the orders for supporting Col. Thomas?

A. Col. Howard.

Q. Did he see Col. Howard leave the first battalion, when he (Col. Howard) went on a message to Col. Simcoe?

A. He did ; he was just by at the time.

Q. Did he see Col. Gordon with the first battalion at this time, or hear Gen. Matthew give or send orders to Col. Gordon, to take the command of the brigade of Guards, during Col. Howard's absence?

A. He did not, nor did he hear Gen. Matthew give such an order.

Q. At the same time he was in the orchard with Col. Thomas, did he hear Col. Thomas give orders to Serjeant Curtis, to go in search of Col. Gordon; and what report did Serjeant Curtis make on his return?

A. Colonel Thomas sent Serjeant Curtis to Col. Gordon for orders ; and Serjeant Curtis returned,

turned, and reported he could not find him (Col. Gordon.)

Q. Did he hear where Col. Thomas ordered Serjeant Curtis to look for Col. Gordon; and did he hear Serjeant Curtis, on his return, say where he had been searching for Col. Gordon?

A. He does not recollect to have heard where Col. Thomas directed Serjeant Curtis to search for Col. Gordon, or where the Serjeant said he had been searching for Col. Gordon.

Q. Does he remember Adjutant Wilson, or Serjeant-Major Jermain, being also sent by Col. Thomas to search for Col. Gordon; and what report did they bring back to Col. Thomas?

A. He does not at present recollect; he remembers something of their being sent off, but not particulars.

Q. Does he recollect to have seen Col. Gordon with the first battalion, when the first battalion took possession of the heights of Springfield?

A. He does not recollect seeing Col. Gordon at that time.

Q. By whose orders were those heights taken possession of?

A. By Col. Stewart's order.

Q. Did not the two battalions of Guards arrive at the heights of Springfield at the same time?

A. As far as he can recollect, they did.

Q. Did he see Col. Gordon with either of the battalions at this time?

A. He did not see him with the first; he cannot take upon himself to say, whether or not he (Col. Gordon) was with the second.

Q. Does he recollect to have seen Col. Gordon with

with the first battalion, halted near the orchard, where Col. Barton's corps was engaged?

A. He does not.

Q. Was it not, when the Guards were halted near the orchard, that Col. Howard was sent off by Gen. Matthew to Col. Simcoe?

A. It was not; it was on the march from where they halted, before they got on the heights.

Q. Does he recollect to have seen Col. Gordon with the brigade, from the time they halted, till they had taken possession of the heights of Springfield?

A. He does not.

Q. Did he hear any conversation pass between Col. Thomas and Col. Gordon, wherein it was mentioned Col. Gordon had been waiting in the rear for orders?

A. He heard some altercation; but he cannot pretend to say the words, from length of time; thinks he heard Col. Gordon say he had been in the rear for orders.

Q. When the two companies were detached in the orchard, was there any firing on the remaining part of the brigade?

A. He thinks not; he does not recollect there was.

Q. Was there any firing on the brigade, on their advancing to take possession of the heights of Springfield?

A. There was a good deal of firing, from the time they left the place where they halted, to the time they took possession of the heights.

Q. Does he know what number of men the brigade of Guards lost on that march?

A. He does not.

Q. Where

Q. Where was he posted in the battalion during that march; and did he continue with his post during that march?

A. He commanded the second company of the first battalion, which company he did not leave the whole day.

Q. Did he hear Col. Stewart, at any time during that day, mention his surprise at not finding Col. Gordon with the battalion?

A. He does not recollect.

Q. Does he recollect when and where Col. Howard rejoined the brigade of Guards, after returning from Col. Simcoe, and the interval of time he was absent?

A. As far as he recollects, the interval of time might be from twenty minutes to half an hour; he rejoined the brigade some time after they had taken possession of the heights.

Q. What length of time had the brigade of Guards been on the heights of Springfield, when the conversation happened between Col. Gordon and Col. Thomas?

A. To the best of his recollection, not above five minutes.

Q. (*from Col. Gordon.*) Did not the brigade of Guards march in divisions, by companies following each other in succession?

A. To the best of his recollection, they marched by companies.

Q. Does not he think the space of time, between the first company and the last ascending the heights, was five minutes?

A. He should not think it could be more, if so much.

Q. From his situation of being with Capt. Lovelace's company towards the rear of the second

second battalion, might not he have been imperceptible to him (Capt. Maitland)?

A. That's a matter of opinion; he might have been there; he (Capt. Maitland) did not look back.

The Court adjourned till to-morrow morning, ten o'clock.

Friday, August 23, 1782.

THE Court being met, pursuant to adjournment,

CAPTAIN THOMAS SWANTON, of the third regiment of Guards, being duly sworn, was examined.

Q. (from the Court.) To which battalion of the brigade of Guards did he belong, on the 23d of June, 1780?

A. The second.

Q. Did he, at any time in the course of that day, hear Col. Gordon give orders to the second battalion?

A. He did not.

Q. Did he look upon Col. Gordon to have the command of that battalion; or did he hear or see him assume the command of the whole brigade, by either word or action, at any part of that day?

A. He did not conceive Col. Gordon had any thing to do with the second battalion, which was commanded by Col. Schutz; nor did he hear or see Col. Gordon give any orders to the second battalion.

Q. Did

Q. Did not the two battalions of Guards ascend the heights of Springfield at, or nearly at, the same time?

A. He commanded the first company of the second battalion, and followed very close.

Q. Did he see Col. Gordon with either the first or second battalion at this time?

A. He did not.

Q. How long was it; after the brigade of Guards took possession of the heights of Springfield, he saw Col. Gordon?

A. He should imagine, about six or seven minutes, or rather more.

Q. Where did he first see Col. Gordon, after the brigade of Guards had taken possession of the heights of Springfield?

A. He saw Col. Gordon, as near as he recollects, at the bottom of the hill, nearly in the rear of his (Capt. Swanton's) own company.

Q. Upon gaining the summit of the hill, did the brigade form the line?

A. Yes.

Q. Were they formed in line, when he saw Col. Gordon ascending the hill?

A. At the time he saw him he did not take any notice what Col. Gordon was doing, whether he was coming up, or going down the hill: the line had been formed some time.

Q. What distance might Col. Gordon be from him when he saw him?

A. He cannot immediately say; the distance was not very great; though he himself was very near-fighted, he could distinguish Col. Gordon.

Q. Upon the brigade of Guards taking possession of the heights of Springfield, does he know

know who gave the orders for the brigade of Guards forming in line?

A. He did not hear any order given; he formed up with the rest.

Q. Did he hear any orders given to the brigade after they had formed on the heights of Springfield; and by what Officer were the orders given?

A. He did: after they had been for a minute or two on the heights, the Rebels, who had been firing on their flanks, coming very close into the front, Col. Stewart gave orders for a Serjeant's party to go, and drive them away; and a Serjeant, as near as he recollects, did go, in consequence of those orders, from his (Capt. Swanton's) own company.

Q. Did he see Col. Gordon at any time, during the day of the 23d of June, with the second battalion of Guards?

A. He did not.

Q. At the time the brigade of Guards took possession of the heights of Springfield, by a forward move, was Gen. Matthew, or any other Officer of Rank, from whom Col. Gordon might expect to receive orders, in the rear of the column?

A. He cannot say.

Q. Did he see or know where Gen. Matthew was, at or about the time the Guards took possession of the heights of Springfield?

A. No.

Q. In the course of the march from the place where the two companies were in the orchard till the brigade took possession of the heights of Springfield, did he see Col. Gordon?

D

A. He

A. He did not.

Q. In ascending the heights of Springfield by half companies, was there any firing on the brigade of Guards; and whether on the front, flanks, or rear, of the brigade?

A. In the act of ascending, the firing ceased; but there had been firing on the right flank of his company during the march: there might have been a few shot in the rear; but he does not recollect.

Q. Was the body of Rebels, from whom the fire proceeded, in a wood, or on the plain?

A. The Rebels were not in a body, but very much dispersed; the fire was scattering, from a height covered with small bushes.

Q. Does he recollect who commanded the brigade of Guards at that time?

A. When they marched in the morning, Col. Howard commanded; he was informed of no change, officially, or otherwise; as an individual, he received his orders from Col. Schutz.

Q. Does he recollect Col. Howard being sent on a message by Gen. Matthew?

A. He knows nothing about it.

Q. Does he recollect the brigade of Guards being ordered to lie on their arms, on the heights; when and by whom the order was given?

A. He remembers very well the men were told they might sit down, if they pleased; he told his company the same, after the party was gone out; but he does not recollect from whom such an order came.

Q. Does he recollect what loss the brigade of Guards sustained during that day?

A. He

A. He understood the loss was very trifling; he did not lose any of his own company; he understood there were two or three wounded.

Q. Did he hear Col. Stewart express his surprise at the absence of Col. Gordon?

A. He did not.

Q. Were the eighteen men, whom Col. Stewart ordered out, from the second battalion?

A. As near as he can recollect, they were from both battalions.

Q. Does he know by what authority Col. Stewart ordered out the men from both battalions, when Col. Schutz was supposed to command the second battalion; and whether Col. Schutz was absent at the time?

A. He can give no reason why Col. Stewart gave those orders, nor does he know whether Col. Schutz was absent or present at the time; he does not recollect to have seen him.

Q. Who was second and third in command to Col. Howard, in the brigade, at that time?

A. Col. Gordon was second in command, and next Col. Schutz; then followed Col. Stewart.

Q. Does he recollect any conversation between Col. Thomas and Col. Gordon, soon after the brigade was formed on the heights of Springfield?

A. He neither heard any conversation, nor did he see Col. Gordon at all on those heights.

Q. Does he know by whose orders the brigade of Guards quitted the heights of Springfield?

A. He does not.

Q. Has it not been the custom in the bri-

gade of Guards, during their service in America, upon the Officer who commanded that brigade being removed, and the next in seniority taking the command of the whole, that the next in succession, who before commanded the second battalion, is removed to that of the first, and that the one following him in point of seniority, assumes the command of the second battalion?

A. It has been the custom, if I recollect rightly.

Q. Is it usual to do it immediately on the spot for an accidental remove; or does it not require some little time before such remove is made; or whether it is so immediately done as to take place in that instant?

A. Such appointments have generally taken place by written orders, and not immediately.

Serjeant RICHARD FIRSTBROOKE, of the first regiment of Guards, being duly sworn, was examined.

Q. Does he remember any Officer, or Non-commissioned Officer, having been sent by Lieut. Col. Thomas, whilst in the orchard near Springfield, to Col. Gordon, for orders, on the 23d of June, 1780?

A. He recollects Serjeant-Major Jermain being sent.

Q. On the return of Serjeant-Major Jermain to Col. Thomas, what report did he make?

A. That he could not see Colonel Gordon.

Q. Does he recollect the Serjeant-Major saying where he had looked for Col. Gordon?

A. No.

Q. Was he a Serjeant at that time?

A. No;

A. No; he was a Corporal.

Q. What company did he belong to?

A. The first company of the first battalion.

Q. Where was he standing at the time?

A. On the right of the first platoon of the first battalion.

Q. Where was Col. Thomas standing at the time?

A. In the front of the first company.

Q. Did he hear the whole of the conversation that passed between Col. Thomas and Serjeant-Major Jermain, on his returning?

A. He thinks the whole of the conversation at that time was, the Serjeant-Major told Col. Thomas, he could not find Col. Gordon.

Q. How long might Serjeant-Major Jermain be in search of Col. Gordon?

A. He believes it might be about seven or eight minutes.

THOMAS HOBBS, private soldier in the first regiment of Guards, being duly sworn, was examined.

Q. Was he with the brigade of Guards on the 23d of June, 1780?

A. He was servant to Col. Thomas at the time, and with the brigade.

Q. In what particular way was he employed on that day?

A. He had the care of a horse and a pair of canteens belonging to Col. Howard, and of a few things belonging to Col. Thomas.

Q. Was he not obliged to stop for some time, as the troops were passing towards Springfield and the heights thereof, in order to mend and repair

repair the trappings of the horse or canteens, with which he was intrusted by Col. Howard and Col. Thomas?

A. Yes; he stopped some time, and took the opportunity, while the brigade halted, to repair his canteens.

Q. Did not the two battalions of Guards pass him while he was doing this?

A. The two battalions of Guards passed him, as also a Hessian regiment.

Q. Did not also some mounted Yagers pass him in the rear of the Hessian regiment?

A. Some Hussars passed him that did not follow the Hessian regiment, but turned to a road on the left.

Q. At and after the time the two battalions of Guards, as also the Hessian regiment and Hussars, had passed him, did he see Col. Gordon; if he did, where and in what position did he see him?

A. After the Hussars had passed him, seeing them turn to the left of the road, and not seeing any other troops in the rear of him, he thought proper to follow them, as the two battalions of Guards were then out of his sight; the Hussars had turned to the left, as near as he can recollect, about five minutes before him. When he came into the road, 'twas through a field of wheat: he saw Col. Gordon standing behind a hedge, with his left against a tree, as he (the Deponent) passed him. As he passed, Col. Gordon continued standing in the same position: that he passed on that way till he came to a run of water; there being no bridge, he crossed it, just above a mill. As he came into

into the road, the village of Springfield was on his left; and in about ten minutes after, he saw the brigade of Guards formed on the heights of Springfield; they might have been formed some time before: that some were sitting down, and some standing: that on the road leading to Springfield, he met Gen. Matthew and Col. Howard: Col. Howard bid him remain there, as the Guards were about leaving the heights. Whilst he was waiting, the two battalions of Guards came down and formed in the road, rather on the left of Springfield, on a rising ground, with a hollow in their rear. He did not see Col. Gordon from the first time, till the men were formed there.

Q. When he saw Col. Gordon the second time, what was he (Col. Gordon) doing?

A. He was endeavouring to move a piece of Hessian artillery up to a rising ground, in front of the first battalion, and afterwards came to the Deponent to borrow a bear-skin belonging to Col. Howard, to lay his head on.

Q. What distance was the tree, under which he saw Col. Gordon, and the hedge near it, from the high road, by which the brigade marched towards Springfield?

A. As near as he recollects, about one hundred yards.

Q. Will he describe the situation of that tree and hedge, with respect to where the enemy then were; was the tree between Col. Gordon and the enemy, or was he (Col. Gordon) on the side of the tree nearest the enemy?

A. The hedge was between Col. Gordon and the enemy, but not the tree, as he stood sideways

ways towards the enemy: there was a firing at that time, and several shots went over his (the Deponent's) head.

Q. Was there any firing at that time on the front of the column, which the brigade of Guards belonged to, and were then leading?

A. He cannot tell, as at that time he could not see the battalions of Guards, nor the Hessian regiment.

Q. Was the Hessian regiment following the Guards, also out of sight, when he saw Col. Gordon under the tree?

A. They were out of sight, either by a turn or hollow in the road.

Q. Were those Rebels in the rear of him, when he saw Col. Gordon?

A. He saw none; but there was a firing in a wood, to the right of him: that he was afraid of being taken prisoner, and therefore turned to the left, and followed the Hussars.

Q. When he saw Col. Gordon standing behind the tree, could Col. Gordon have joined the brigade of Guards without passing him?

A. Yes.

Q. Was the road taken by the brigade of Guards, or that which he (the Deponent) and the Hussars took, the nearest to the place where he saw the brigade of Guards formed on the heights?

A. He cannot tell.

Q. When he saw Gen. Matthew and Col. Howard, were they going towards the heights?

A. Yes.

Q. At what distance from the heights did he meet Gen. Matthew and Col. Howard?

A. He

A. He cannot exactly say; 'twas a high hill; it might have been three quarters of a mile, or not so much.

Q. Were any shots fired from the cannon, after he saw it moved towards the heights?

A. Not after it was moved; but he saw one or two shots fired, by Col. Gordon's directions, previous to its being moved.

Q. Was there a fire from the enemy at the time Col. Gordon directed the shots to be fired?

A. There was no firing at that time on the Guards, but there was a firing from the woods on the Yagers.

The Deputy Judge-Advocate proposed two Questions to the Witness, respecting a man of the name of John Barnes having been with him (the Witness) at the time he saw Col. Gordon under the tree, &c. on the 23d of June, 1780, and the efforts made by him (the Deputy Judge-Advocate) to find the said John Barnes, in order to produce him as a witness: but the Court being of opinion that he (John Barnes) might possibly be found, they judged such examination of Hobbs to be unnecessary; and the said Questions, together with the Answers thereto, were accordingly expunged from the proceedings.

The Court adjourned till to-morrow morning, ten o'clock.

Saturday, August 24, 1782.

THE Court being met, pursuant to adjournment,

THE Deputy JUDGE-ADVOCATE submitted to their consideration the written testimony of such witnesses as had been examined on the Tryal of Lieut. Col. Thomas, who were either dead or absent; it being previously agreed and assented to by the Deputy Judge-Advocate on the one part, and Col. Gordon on the other, that, although many things might be contained in those said testimonies, given on a former accusation, which were not immediately applicable on the present, yet, as the several Questions and Answers exhibited therein were so intermixed as to render it difficult to make a selection that might be acceptable to all parties, it would be at least erring on the safe side, to let the whole of each be read, and stand on the Proceedings of the present Court. They were accordingly read, and are as follows:

"**Capt. THOMAS COLLINS**, Major of Brigade to the brigade of Foot-Guards, being duly sworn, was examined.

Q. (by Lieut. Col. Gordon.) Did not he (the Witness), on the night of the 31st of July, tell Col. Gordon, that he had been charged by an Officer

Officer with not doing his duty on the 23d of June, and that reasons the most infamous to the character of a Gentleman were annexed to that charge?

A. As nearly as he can recollect, it was in the evening of the 30th of July that he told Col. Gordon, in the course of conversation, that he had heard him spoken of in a manner that was highly prejudicial to his character as an Officer and a Soldier.

Q. Whether Lieut. Col. Gordon did not say that he guessed whom he meant, though he did not give him his name, and add at the same time, that he had wrote to Major General Matthew concerning a conversation he had had with Lieut. Col. Thomas in passing the burned church at Springfield?

A. He remembers Col. Gordon saying that he guessed who the person was, from a conversation he had with him, and that he had wrote to General Matthew, or the General, (he does not recollect exactly the expression) on the subject; that he (the Witness) added, that he did not look upon this matter as a secret, as he had heard it was made the topic of conversation at many tables or places; in consequence of which he thought proper to inform Lieut. Col. Gordon of it, in order that he might justify his character, for his own honour, and that of the corps he served in; that he should in course be ready to give up the author or authors of these assertions, whenever he was called upon.

Q. (by the Court.) How soon after the 23d of June did he hear Lieut. Col. Thomas had objected to Lieut. Col. Gordon's conduct on that

day; and were these objections made publickly or secretly?

A. On the 23d of June, on the return of the army from Springfield, he was asked by an officer, whether he had heard of the altercation between Lieut. Col. Gordon and Lieut. Col. Thomas. His reply was, that he had not, having been a good deal absent from his own corps that day, in his attendance on the General; but begged to know what it was. The officer answered, that Lieut. Col. Thomas had very warmly attacked Lieut. Col. Gordon. He (the Witness) asked upon what subject he had attacked him. The answer was, it was upon points of duty; that Col. Thomas had said to Col. Gordon, Where, Sir, have you been? I have sent very frequently for orders, but could get none; or other words to that effect, which he (the Officer) looked upon of such consequence as must bring on an immediate explanation from the parties on their return to camp.

Q. As he (the Witness) has said that he thought it proper to give Col. Gordon an information which would give him an opportunity of vindicating his honour, is it from hence to be inferred, that he supposed Col. Gordon was till that time ignorant of the fact?

A. He could not suppose Col. Gordon, as may be inferred from his answer to a former question, to be ignorant of the fact, though he might be of the general manner in which it was spoken of: he further could not think him ignorant of the fact, because he heard one of the people who accused him, frequently and publickly express his surprise at neither Col. Gordon,

Gordon, or, if the corps knew it, their not bringing the matter to an explanation.

Q. Did he ever hear Lieut. Col. Thomas himself declare that Lieut. Col. Gordon had been guilty of neglect of duty on the 23d of June?

A. He has heard Lieut. Col. Thomas frequently avow his accusation against Lieut. Col. Gordon; he has heard Lieut. Col. Thomas say that he had accused Lieut. Col. Gordon himself upon the heights of Springfield.

Q. Was this accusation, by Lieut. Col. Thomas against Lieut. Col. Gordon, made in a secret or public manner?

A. As publickly as his (the Witness's) own table, or other tables they may have casually dined at, could be; but never in confidence.

Q. (by Lieut. Col. Gordon.) Where was Lieut. Col. Gordon from the 23d of June, when he received his hurt, till the 27th of July, when he rejoined his command?

A. He was absent from the brigade, and as he (the Witness) heard, in New York, in consequence of the hurt he had received.

Q. Does he (the Witness) think that Lieut. Col. Gordon could hear of conversations that passed at his, or other tables, when he was at twelve miles distance from them?

A. He rather thinks that Col. Gordon did not hear of them, and for this reason he informed him of them.

Serjeant-Major THOMAS JARMAN, of the brigade of Guards, being duly sworn, was examined.

Q. (by

Q. (by Lieut. Col. Gordon.) Did not he see Col. Gordon with his command at three o'clock in the morning of the 23d of June?

A. Yes, he did.

Q. Whether he did not, at different times of the march, see Lieut. Col. Gordon with his command, either on horseback, or on foot?

A. He saw Lieut. Col. Gordon at different times on the march; but he did not see him at the time that Lieut. Col. Thomas's company was ordered into an orchard to support some other troops engaged there, nor till near an hour afterwards.

Q. Whether he did not see Lieut. Col. Gordon at the time the Guards ascended the heights beyond Springfield, and Col. Gordon made his disposition?

A. He did not.

Q. Was the first company upon those heights?

A. Yes, the whole battalion was, the flank companies excepted.

Q. Did he see Lieut. Col. Gordon returning from those heights to the second position they took?

A. Yes, he did.

Q. Did he not see Lieut. Col. Gordon, the whole time that they were at this position, sitting or standing by the men?

A. He did.

Q. Did not the men, upon seeing three columns of the enemy, with four pieces of cannon, coming down upon the left, desire Lieut. Col. Gordon to change their position?

A. He heard Col. Gordon apply to Col. Howard for leave to change the position; but he

he cannot say whether any application to this purpose was made by the men, as he was walking about in different parts of the battalion.

Q. (by the Court.) Was the position changed in consequence of Col. Gordon's application to Col. Howard?

A. It was not.

Q. (by Col. Gordon.) Did not Col. Gordon order him (the Witness) to make the left of the battalion fall back, so as to form an oblique front to the enemy?

A. Yes, he did.

Q. Did not Col. Gordon, on making this manœuvre, order Lieut. Col. Thomas, with some other Officers, from under a tree, to join their companies?

A. Such an order might be given, but he did not hear it.

Q. (by the Court.) Did the Officers in general fall in with their companies at the time this manœuvre was making?

A. Col. Howard, Col. Thomas, and the Adjutant, were at the time at dinner, under a tree; if the Officers in general were with their companies, he did not see them.

Q. (by Col. Gordon.) Did he not see Col. Gordon always with his command, from their taking this second position, till they again marched; or did he see him eating?

A. He saw him all this while with the battalion; he did not attend to whether he eat or not in the time.

Q. (by the Court.) Was Col. Thomas's company detached that day, when they went down to the orchard?

A. It

A. It was detached to the support of some troops in the orchard.

Q. Did he (the Witness) go down with that company?

A. Yes.

Q. What distance was the orchard from the other five battalion companies?

A. About a quarter of a mile, or hardly so much.

Q. Does he know by whose order Lieut. Col. Thomas's company was detached?

A. He does not.

Q. Did he hear any conversation between Col. Gordon and Col. Thomas that day?

A. He did not.

Serjeant JOHN DAVIES, of the brigade of Guards, being duly sworn, was examined.

Q. (*by Lieut. Col. Gordon.*) At the time the Guards were in their second position, near the town of Springfield, did not he (the Witness) hear some of the men apply to Col. Gordon to change this position, and at the same time say, that they would be flanked by cannon on their left, if it was not changed immediately?

A. He did not.

Q. Does he know of Col. Gordon applying to Col. Howard to have the position changed?

A. He does.

Q. Did he not see the Officers, Lieut. Col. Thomas amongst the rest, drawing their companies from under a tree, in consequence of Col. Gordon's orders?

A. Some of the companies on the left changed their ground; and Lieut. Col. Thomas's, according

cording to the best of his recollection, amongst the rest.

Q. Did he not see Col. Gordon always with his men, giving close attention to them at this period?

A. At the time of changing their position, he saw Col. Gordon there, and busy in moving a piece of cannon.

Q. (by the Court.) Did the enemy fire from those cannon at this time?

A. He believes that they did.

Q. Did he see Col. Gordon doing his duty at the time the enemy were firing cannon?

A. Yes, he did.

Q. (by Lieut. Col. Gordon.) At the time that the enemy's cannon were firing, did he see Lieut. Col. Thomas with his company?

A. As he remained with his own company, which was at a distance from Col. Thomas's, he could not see whether he was, or not, with his own company.

Q. Was it at the time that Col. Gordon was moving the piece of cannon, that he saw Col. Thomas under a tree?

A. It was before: by the time the cannon was moved, Lieut. Col. Thomas was gone from under the tree.

Q. Were the six battalion companies of the Guards engaged that day with musquetry?

A. The left of the battalion were engaged for a short time.

Q. Was it before or after the battalion changed their position?

A. It was just before.

Q. (by Col. Gordon.) Did he at any time

F during

during this position, whilst the enemy were firing cannon, see Col. Gordon in the hollow place under the tree?

A. He did not.

Q. (*by the Court.*) Does he know who commanded the six battalion companies of the Guards when they took their first position upon the heights of Springfield?

A. He does not positively know; but he understood they were all under the orders of Lieut. Col. Howard.

Q. Who commanded the Guards in the absence of Col. Howard, when he was on another duty?

A. Col. Gordon, undoubtedly, as the senior officer.

Q. Did he see Col. Gordon at the time the Guards took their first position on the heights of Springfield?

A. He did not.

Q. Did he see him returning from those heights?

A. The first time he saw Col. Gordon in returning from those heights, was when he was moving the Hessian cannon.

Major-of-Brigade COLLINS, already sworn, was again examined.

Q. (*by Lieut. Col. Gordon.*) Did not Lieut. Col. Gordon assemble the officers of the first battalion on the heights of Fordham, and desire the person who disapproved of his conduct to stand forth and declare himself?

A. Lieut. Col. Gordon, on the 2d of August, came on the parade, just as the men were about

about to be dismissed, and said to Lieut. Col. Thomas, who was there amongst other officers, that he had received his letter, and was come there in person to answer it, requesting at the same time Lieut. Col Stewart's permission to make use of his whiguham for that purpose: at this place Lieut. Col. Gordon explained to Lieut. Col. Thomas the letter he had received; but declined shewing the copy of a letter written to Gen. Matthew by him, which Lieut. Col. Thomas demanded in the one he had written that morning to Col. Gordon. After this some altercation ensued between Lieut. Col. Gordon and Lieut. Col. Thomas, but nothing, as he (the Witness) recollects, particularly pointed on either side; which made him apprehensive it might not come to an explanation: for which reason, he again told Col. Gordon, the expressions he had heard were absolutely necessary to be cleared up: his reply was, that he wished it, and then either did, or shewed a desire to call upon the person: that Col. Stewart, who was one of the officers present, observed, that he thought it was very right; but, as that was only a partial meeting of the brigade, he thought it would be proper to defer it till a meeting of all the officers of the brigade was called; which was agreed upon, and he (the Witness) assembled them accordingly at twelve o'clock the same day.

Q. (by the Court.) Was the letter that Col. Thomas wrote to Col. Gordon, and which Col. Gordon said he would answer in person, relative in any degree to the matter now before this Court?

A. En-

A. Entirely.

Q. (by Lieut. Col. Gordon.) Was Lieut. Col. Thomas present at the meeting of the officers of the first battalion?

A. He was.

Q. Did he acknowledge himself to be the person who disapproved of Lieut. Col. Gordon's conduct this *first* meeting?

A. Not that he recollects : there was a good deal of altercation ; but he does not remember that he avowed himself the author of it.

Q. Did not Lieut. Col. Gordon order him (the Witness) to assemble all the officers of the brigade at twelve o'clock, and again desire the person who disapproved of his conduct to avow himself?

A. He was desired to assemble all the officers of the brigade ; but whether it was by Col. Gordon, he cannot recollect ; but he thinks it most likely that the order proceeded from Lieut. Col. Gordon, as commanding officer : but he looked upon it rather as an agreement amongst the officers, than as an order ; that at this meeting Lieut. Col. Gordon desired the Witness to explain to the officers the reason of that meeting, and then desired the person who had aspersed his character, if he was present, to avow himself.

Q. Was Lieut. Col. Thomas at this second meeting?

A. He was.

Q. Did Lieut. Col. Thomas answer immediately to the request of Lieut. Col. Gordon?

A. He believes that Lieut. Col. Gordon repeated the question before Lieut. Col. Thomas answered.

Q. Did

Q. Did not he (the Witness) complain of the interval of silence, expressing himself, that his situation was very disagreeable, as he should be under the necessity of becoming an informer?

A. At that moment he made an appeal to his brother officers, and requested their opinion concerning his giving up the Author's name; but does not recollect his regretting his being obliged to be an informer, or any such circumstance.

Q. Did not Lieut. Col. Gordon say, that he owned his (the Witness's) situation to be disagreeable; but, to vindicate his (Lieut. Col. Gordon's) honour, he must oblige him to impeach the person?

A. He recollects Col. Gordon's telling him, that he expected the Author's name from him; and, he believes, at the time that Col. Gordon mentions.

Q. Did Col. Thomas then, or till after a little silence, declare that he was the person?

A. Then, or immediately after, he does not recollect any other conversation intervening, Lieut. Col. Thomas stood up, and said, "Why need I be backward in accusing you, Col. Gordon, when I have already done it? I accuse you, Col. Gordon." On which Col. Gordon said, "Major Collins, you will put Col. Thomas in arrest." He (the Witness) answered, that he should immediately obey his orders; but asked whether it would not be proper first to hear Col. Thomas's accusation; which Col. Gordon then demanded, and he (the Witness) took it down in writing, and gave one copy of it to Lieut. Col. Gordon, and another to Lieut. Col. Thomas.

Q. Who

Q. Who was the person that told him that a dispute had happened between Col. Thomas and Col. Gordon?

A. Lieut. Col. Howard.

Q. (*by the Court.*) Whether it was on the 23d of June that he heard Col. Howard say, that a dispute had happened between Col. Gordon and Col. Thomas?

A. Yes.

Q. Was the altercation that ensued, after Col. Gordon and Col. Thomas met at Lieut. Col. Stewart's whiguham, relative to the matter now before the Court?

A. It rather seemed to indicate, that Col. Gordon suspected Col. Thomas to be the person that aspersed him.

Q. At the meeting of the officers of the brigade of Guards, can he recollect the identical words, or nearly those, of Col. Gordon's request?

A. He thinks, as nearly as he can recollect, that Lieut. Col. Gordon, then looking at Lieut. Col. Thomas said, If the person who has accused me is present at this meeting, which I believe, or suppose he is, I desire he will stand up, or forth; if not, I shall require him of you (meaning the Witness.)

Q. Did not Lieut. Col. Gordon at this meeting say, that he had been calumniated in his absence, and that he called upon the person who had done it to stand forth?

A. He don't recollect such an expression from Col. Gordon.

Q. Will the Witness recollect, and relate to the Court, as nearly as he can, the words made use of by Col. Thomas in his answer?

A. The

A. The words were, I accuse you, Sir, of not doing your duty before the enemy, on the 23d of June.

Q. Did he hear Lieut. Col. Thomas say, upon this, or any other occasion, that he commanded the Guards on the 23d of June?

A. Never, as he recollects, but at the meeting of the officers of the first battalion; when Col. Gordon, as part of the altercation between Col. Thomas and him, said, he recollects Col. Thomas having said to Col. Howard,—Col. Howard, I have had the honour to command the brigade of Guards to-day. On which Col. Thomas replied, “Surely, Col. Gordon, you must suppose that I was jocose when I made use of that expression, as I never could possibly mean that I commanded the brigade of Guards, when there were so many senior officers present; as I must have reflected upon all of them, if I had meant it seriously.” Lieut. Col. Gordon answered, that he (Col. Gordon) said, he had observed that assertion at the time, alluding, as he (the Witness) understood it, to the 23d of June; but, if that is a feather in your cap, Sir, you may wear it. Lieut. Col. Thomas admitted this; but said, Col. Gordon, I do not mean to reflect on any of those gentlemen I have mentioned; but, if they think I did, I beg *their* pardons; but I don’t beg *yours*, as I meant the expression to you, for reasons I had; and I despise you, Sir.

Q. When Col. Gordon was informed by Lieut. Col. Thomas, at a meeting of the officers of the brigade of Guards, that he was the person who had accused him, does he (the Witness) conceive

ceive this to have been the first time the circumstance of the accusation was *officially* announced to Col. Gordon?

A. This was the first time that Col. Thomas, in his hearing, *officially* accused Col. Gordon: he had, however, heard before, that Lieut. Col. Thomas had accused him.

Q. Can he of his own knowledge, or as far as comes within the reach of it, say, that Lieut. Col. Thomas ever secretly, or scandalously, aspersed the character of Lieut. Col. Gordon, in a manner unlike an officer and a gentleman?

A. Lieut. Col. Thomas never spoke to him in *confidence*; upon this subject, but always as publicly as the nature of the subject would admit of: he has often heard Col. Thomas express his astonishment that the matter had never come to a hearing.

Q. (by Lieut. Col. Gordon.) When Lieut. Col. Howard mentioned to him the dispute that had happened between Col. Gordon and Col. Thomas, did he relate to him the particulars of that dispute?

A. As nearly as he (the Witness) can recollect; and, as he asserted in a former part of his examination, it was, that Col. Thomas demanded of Col. Gordon, where he had been, telling him, that he had frequent occasion to send to him for orders; or words to that effect.

Q. At what time of the day did Lieut. Col. Howard say that he had heard this conversation?

A. He did not demand of Lieut. Col. Howard, at what time of the day it happened.

Q. (by the Court.) Was what he has related to the Court, the whole of what Col. Howard told

told him respecting the conversation between Col. Gordon and Col. Thomas ?

A. The whole ; except that Lieut. Col. Thomas spoke in a hurry, and with warmth ; and that he (Col. Howard) thought it must come to a further explanation, when they arrived in camp.

Lieut. Col. ROBERT LOVELACE, of the Cold-stream regiment of Foot-Guards, being duly sworn, was examined.

Q. (*by Lieut. Col. Gordon.*) On going to take possession of the heights beyond Springfield, on the 23d of June, did he not see Col. Gordon with his command ?

A. He saw him with the second battalion.

Q. Did he (the Witness) say to Col. Gordon at that time, that it was very hot ; and did not Col. Gordon smilingly answer, that it was so in more respects than one ?

A. He recollects saying it was hot ; Lieut. Col. Gordon's answer he does not remember.

Q. Did he mean that the weather was hot, or that the enemy's fire was hot ?

A. He meant to allude to the weather.

Q. (*by Lieut. Col. Gordon.*) Did he not think that the fire from the enemy was more troublesome, at that period, to the second battalion, than that in front ?

A. The distance from the front of the first battalion to the rear of the second, was so great, that he cannot pretend to judge.

Q. What sort of a fire from the enemy was it, whether upon the front, or the flank ?

A. It seemed to come from the front to the flank, and not more in one place than another.

Q. Does he not think, that at this time, when the Rebels were firing, if Col. Thomas had sent to Col. Gordon for orders, he might have been easily found with his command?

A. This the Witness looks upon as a matter of opinion, and not a matter of fact.

Q. Was not Lieut. Col. Gordon in the column when he spoke to him (the Witness)?

A. According to the best of his remembrance, Lieut. Col. Gordon was on the left flank of the *sixth* company.

Q. Whether, at the time Lieut. Col. Gordon was speaking to him (the Witness) towards the rear of the column, he could not have been found, if he had been sent to for orders?

A. Undoubtedly, if they had been sent to the rear of the *second* battalion.

Q. Was there a hot fire upon the left of the second battalion at that period?

A. There was a scattering fire; but no more upon that part of the brigade than any other.

Q. (by Lieut. Col. Thomas.) Did he (the Witness) see Lieut. Col. Gordon at the time they ascended the heights beyond Springfield?

A. He saw Lieut Col. Gordon very soon after the rear of the second had taken possession of those heights.

Q. Does he remember a severe cannonade in an orchard near Springfield, where the Guards were formed?

A. He remembers three or four shots being fired; not more, he believes.

Q. (by the Court.) Was this before or after

after they ascended the heights of Springfield ?

A. After they had ascended them.

Lieut. Col. JOHN HOWARD, commanding the brigade of Guards, being duly sworn, was examined.

Q. (*by Lieut. Col. Gordon.*) Whilst Springfield was on fire, and whilst the brigade of Guards were returning, did he not see Lieut. Col. Gordon on horse-back, Lieut. Col. Thomas walking on his (Lieut. Col. Gordon's) right hand, and he (the Witness) close on his right ?

A. They were all three nearly together ; he does not particularly recollect their situation.

Q. Did he not hear Lieut. Col. Thomas say something of his having commanded the Guards that day ?

A. He thinks he recollects that he did.

Q. Did he not hear Lieut. Col. Gordon ask him what he meant by that insinuation ; and did not Lieut. Col. Thomas answer, with a malignant smile, that I mean nothing but that I commanded the Guards that day ?

A. He does not recollect either Col. Gordon asking Col. Thomas such a question, or Col. Thomas answering it : such a conversation might have happened.

Q. Did not he hear Lieut. Col. Gordon say to Lieut Col. Thomas, If it is a feather in your cap, so far as it relates to myself, you may wear it ?

A. He does not particularly recollect hearing it.

Q. In the *second* position, near the town of Springfield, did not Lieut. Col. Gordon come to

him (the Witness) and desire his permission to change the situation of his battalion, telling him that the enemy's cannon would enfilade them in their present position ?

A. He recollects Col. Gordon coming to him for this purpose ; and his answer was, that he thought there was no occasion.

Q. Was not his (the Witness's) answer, that Gen. Matthew had posted the battalion, and that he could not change their position ?

A. He cannot recollect his having given such an answer.

Q. Did he not desire him (the Witness) to look upon the situation of his battalion ?

A. Upon Col. Gordon coming up to him a second time, he gave an order for the battalion to change their position ; he remembers saying, that he wished the Rebels would come down.

Q. As Lieut. Col. Thomas says that he disapproved of Lieut. Col. Gordon's conduct *publicly*, and particularly to him (Lieut. Col. Howard), does he (Lieut. Col. Howard) think what he said was of import to the disservice of his Majesty's arms, or detrimental to Lieut. Col. Gordon's character as an officer next in command to himself, in the corps of Guards ?

A. He cannot answer such a question.

Q. (*by the Court.*) Did the corps of officers of the Guards remonstrate, or complain to him, as commanding officer, of the conduct of Lieut. Col. Gordon, on the 23d of June ?

A. He had no regular complaint made to him.

Q. Did Lieut. Col. Thomas, on the 23d of June, or since, acquaint him (Lieut. Col. Howard)

ard) that Lieut. Col. Gordon did not do his duty before the enemy that day?

A. No regular report was made of it; but a conversation passed in his hearing, which he (Col. Howard) could not clear up, but which he thought it behoved Col. Gordon to clear up.

Q. (*by Col. Gordon.*) What was this conversation, and when did it happen?

A. It was on their march from Springfield to Elizabeth Town. Lieut. Col. Thomas said, that his company was at the head of the first battalion; that he had sent Mr. Wilson the Adjutant, and somebody else, once or twice, to Col. Gordon, for orders how to act; and that he could not find him: this was the purport and most material part of the conversation; and Col. Gordon's answer to this was to this effect: "Sir, you may have been at the head of your company; but that is no reason that you should know the position of any other officer"—or words to that purport. That he (the Witness) was sent off by Gen. Matthew to Lieut. Col. Simcoe, and did not know the facts alluded to in the conversation, and therefore did not join in it; but he remembers saying to Col. Thomas, that, if he spoke so loud, Col. Gordon would hear what he said; and Lieut. Col. Thomas answered, that he meant he should.

Q. Was this conversation addressed to Col. Gordon?

A. It was heard by Col. Gordon, for he replied to part of it.

Q. Does he imagine that Col. Gordon heard Lieut. Col. Thomas say, that he meant he should hear the conversation?

A. He is of that opinion.

Q. As

Q. As he thought that Lieut. Col. Gordon must have heard Lieut. Col. Thomas's intended slur upon his character, and as his (the Witness's) memory cannot serve him for his third question, was he (Lieut. Col. Gordon) nearer to him (Col. Howard) and Col. Thomas upon the last part of the conversation, and induced to believe that Col. Gordon heard Col. Thomas's intended slur, when he could not hear his answer relative to Lieut. Col. Thomas's saying he had *commanded the Guards?*

A. When the principal and material part of the conversation between Lieut. Col. Gordon and Lieut. Col. Thomas happened, Lieut. Col. Thomas was upon his (Col. Howard's) right, and Lieut. Col. Gordon upon his left: he can give no further particulars of the conversation than he did in the course of his evidence * yesterday.

Q. Were not he (the Witness), Lieut. Col. Gordon, and Lieut. Col. Thomas, close together at the head of the first battalion, whilst this conversation happened?

A. They were close together great part of the march; he cannot ascertain any particular time.

Q. After Col. Gordon got about a quarter of a mile out of the town of Springfield, had he any conversation with Lieut. Col. Thomas?

* In order that Col. Howard's reference to *yesterday* may be understood, it is necessary to explain, that his testimony on Col. Thomas's trial, from which this is taken, was partly given on one day, and partly on the ensuing one.

A. He

A. He does not particularly know; but the conversation was resumed by Lieut. Col. Thomas more than once.

Q. (*by the Court.*) Does he mean the conversation between Lieut. Col. Gordon and Lieut. Col. Thomas, or the conversation amongst all three of them?

A. Col. Gordon, if he recollects right, only answered to the part of the conversation from Lieut. Col. Thomas, which he mentioned yesterday. Lieut. Col. Gordon was so much with them, that he must, he thinks, have heard much more of it; but he does not recollect joining in any other part of it.

Q. Did Lieut. Col. Gordon ever, as one of three, renew the conversation he alludes to?

A. No.

Q. Did he (*the Witness*) know of the first company being detached in an orchard, before he went to deliver a message, or order, at a distance from the six battalion companies, previously his command?

A. He certainly knew that he was; and an order came from Gen. Matthew for him to return.

Q. Did he (*the Witness*), before he left the six companies, give Lieut. Col. Gordon any orders, or directions, as he had a right as his senior officer to do, previous to his going from that command?

A. He had not seen Col. Gordon for some time before. The *Witness* here begged leave to mention the cause of his absence from the six battalion companies. When they moved forward on the road, a guide came up to Gen. Matthew, who

who acquainted him, Lieut. Col. Simcoe would not obey any orders coming from him (the guide) as not having a proper authority to convey them : the orders were for Lieut. Col. Simcoe to move forward to the road, and head the line of march : Gen. Matthew, in answer, said he must move forward, and looked round for his Aide de Camp, or Major of Brigade ; that not seeing either of them near, he (the Witness) offered to deliver the order : the General expressed himself obliged to him, and gave him the same order to deliver to Col. Simcoe ; that after the order was delivered, in riding back to make his report, and join the two battalions, he met Major-of-Brigade Collins, who was sent for the same purpose to Lieut. Col. Simcoe ; but on his acquainting him that he had already delivered Gen. Matthew's order, they turned back, and soon after met the General, to whom he reported that Lieut. Col. Simcoe had moved with his corps ; and, on enquiring after the brigade, he found that the two battalions had marched forward ; and the only means he had of joining them, was moving with Lieut. Col. Simcoe's corps ; that, on not finding the brigade in the road, Major Collins pointed them out to him, ascending a height where he (the Witness) joined them ; that the time of his absence was about a quarter of an hour, or twenty minutes ; but the time may be ascertained by Mr. Wilson, the Adjutant, who heard the order delivered, by Capt. Maitland, who saw him ride off with the Guide, and by Major-of-Brigade Collins : but he has every reason to believe, that no other officer
of

of the brigade knew, at the time, of his being sent off with the order.

Q. (by Lieut. Col. Gordon) Did he (the Witness) know, that the six battalion companies, during his absence, and then under the command of Lieut. Col. Gordon, were under a heavy fire of the enemy?

A. They were certainly under a fire of the enemy at that time.

Q. (by the Court.) Has he ever, subsequent to the 23d of June, heard Lieut. Col. Thomas speak of the conduct of Lieut. Col. Gordon on that day?

A. He has.

Q. Did he, in speaking of Lieut. Col. Gordon's conduct, secretly do it; or did he publicly declare his opinion relative thereto?

A. As he (the Witness) does not exactly recollect the periods of time, he cannot say what other persons were present; but he always understood that he spoke of it publicly.

Q. Will he (the Witness) relate to the Court, as nearly as he can recollect, the expressions he heard Lieut. Col. Thomas (during the absence of Lieut. Col. Gordon) make use of, in speaking of the conduct of Lieut. Col. Gordon the 23d of June?

A. What expressions he made use of, during Col. Gordon's absence, he (the Witness) does not recollect, as he was absent himself a great part of that time.

Lieut. Col. Hon. JAMES STEWART, of the first regiment of Foot-Guards, being duly sworn, was examined.

H

Q

Q. (by Lieut. Col. Thomas) Does he recollect hearing a conversation between Lieut. Col. Gordon and Lieut. Col. Thomas, on the heights of Springfield, on the 23d of June; and to what did that conversation allude?

A. He recollects a conversation between them that day : he (the Witness) was standing on the heights of Springfield, with Lieut. Col. Thomas, after the two battalions of Guards were formed there, when they saw Lieut. Col. Gordon, at some distance, coming up the hill : as soon as Lieut. Col. Gordon came up, Lieut. Col. Thomas attacked him, in very rough terms, for his absence from the battalion ; to which Lieut. Col. Gordon answered, by saying that he had been waiting in the rear for orders. Some further conversation happened ; but, as he (the Witness) found it a disagreeable one, he did not stay to hear the remainder of it, but went to the other flank of the battalion.

Q. Did Lieut. Col. Gordon form the first battalion of Guards, which he commanded that day, on the heights of Springfield?

A. He did not ; he was not there till some time after the battalion was formed.

Q. Does he recollect to have seen Col. Gordon, or to have received orders from him, from the time the first battalion halted near the orchard, where Col. Barton's corps was engaged, till it was formed on the heights of Springfield?

A. He did not see Col. Gordon during that time ; every order that was given to the battalion, he (the Witness) himself gave.

Q. Does he recollect a severe cannonade from the Rebels, upon the first battalion of Guards, when

when they were formed in an orchard, near the town of Springfield?

A. He recollects *three random shots*, but no severe cannonade. Lieut. Col. Gordon seemed very anxious to have the battalion moved; but he (the Witness) saw no occasion for it: the first shot fell short of his (the Witness's) company; the other two went over their heads. Lieut. Col. Gordon went up to Col. Howard, and pressed so much for moving the battalion, that Col. Howard complied with it.

Q. Does he remember at that time to have seen, or to have heard of three columns of Rebels, with four pieces of cannon, advancing towards them?

A. He heard Col. Gordon call to Col. Howard, that the enemy were advancing, with three pieces of cannon: he (the Witness) upon ascending the hill, saw them coming on with one piece of cannon, which they were carrying round upon their flank.

Q. Does he (the Witness) recollect having made any observation, relative to the extraordinary conduct of Lieut. Col. Gordon, in the orchard near Springfield; and what was that observation?

A. He recollects saying, in a jocular manner, to Lieut. Col. Thomas, when he saw Lieut. Col. Gordon pressing the moving of the battalion, As you have attacked Col. Gordon so roughly this morning, I suppose he is determined to shew you that he can be very alert.

Q. Does he recollect to have heard Lieut. Col. Thomas speak to Lieut. Col. Gordon, on the subject of his former conduct at Spring-

field in general, previous to the meeting of the officers of the brigade of Guards, in his (the Witness's) whiguham, on the heights of Fordham, on the 2d of August; and whether Lieut. Col. Thomas ever shewed any fear of accusing Lieut. Col. Gordon?

A. There was a good deal of conversation about Col. Gordon's conduct on the heights of Springfield, and on other matters. Lieut. Col. Thomas did not shew any *fear* of speaking on this subject; but after a long altercation, Major-of-Brigade Collins said, that he *had* declared, and was now ready to produce an accuser of Lieut. Col. Gordon. The Witness begged that it might not be done there, but that a meeting of the officers of the whole brigade, he requested, might be convened at twelve o'clock that day, in order that they might have time to think on the matter.

Q. (*by Lieut. Col. Gordon.*) Who commands the six battalion companies of the Guards, in the absence of Lieut. Col. Howard?

A. Of course, the next senior officer present.

Q. Who is the next senior officer to Lieut. Col. Howard?

A. Lieut. Col. Gordon is the next in seniority in the brigade.

Q. Did he see Lieut. Col. Gordon, upon his taking possession of the heights of Springfield, sometimes with one part of the brigade, and sometimes with another?

A. In answer to the first part of the question, he (the Witness) has already said, that Lieut. Col. Gordon did *not* take possession of the

the heights of Springfield. Upon there being a good deal of firing on the front, as well as the flanks, Lieut. Col. Thomas, who commanded the front company of the first battalion, came up to him (the Witness), who was then with his own company in the rear of the battalion, and asked him for orders, as neither General Matthew, Lieut. Col. Howard, nor Lieut. Col. Gordon, were then present: That he (the Witness) was rather displeased with Lieut. Col. Thomas for having halted; and, finding that the town of Springfield was carried by our troops, he ordered Lieut. Col. Thomas to his company: That, in going into the front of the battalion, he thought it necessary to take possession of the heights beyond the town; he therefore, after having passed some mill-houses, ordered Lieut. Col. Thomas, with the first company, to push forward for that purpose.

Q. Did not the three companies of the second battalion closely follow the rear of the first?

A. Yes; and Lieut. Col. Schutz formed them when they came to the top of the hill.

Q. Did not Lieut. Col. Gordon order the men to lie on their arms, under the bushes, the weather being extremely hot, and the men very much fatigued with a pressed march?

A. After they had been formed some time, orders were given for the men to lie on their arms; but by whom the orders were given, whether Lieut. Col. Howard, or Lieut. Col. Gordon, he cannot say.

Q. (*by the Court.*) Did he see Col. Gordon with

with the second battalion, when they formed on the heights of Springfield; or did he come up afterwards?

A. He thinks that Col. Gordon came up after the second battalion?

Q. How soon afterwards did Lieut. Col. Gordon come up?

A. It must have been very soon afterwards.

Q. Did he know that Lieut. Col. Gordon was commanding officer of the six battalion companies at the time they took possession of the heights of Springfield?

A. He did not see Col. Gordon present, and therefore could not look upon him as commanding officer.

Q. Did he know, at any part of that day, that Col. Howard was sent by Major-General Matthew for orders, or upon any other duty?

A. He did not positively know it till Lieut. Col. Thomas reported it to him: he saw Major Gen. Matthew speak to Lieut. Col. Howard; but he did not see Lieut. Col. Howard go off, as his (the Witness's) attention was then drawn towards the flanking parties, who had taken a wrong direction.

Q. Whom did he consider as the commanding officer of the six battalion companies at the time of their moving up to take possession of the heights of Springfield?

A. He (the Witness) took upon himself to make this manœuvre with the first battalion; and Lieut. Col. Schutz followed with the second, in order to prevent the enemy gaining them; and was uneasy after having done it, upon the idea of having gone out of the line of

of march: he therefore sent the Adjutant to Major Gen. Matthew, to inform him what he had done. Had he seen Lieut. Col. Schutz, who commanded the second battalion, and was older than himself, he should have asked for his orders; but he thought that there was no time to be lost.

Q. How long was Lieut. Col. Howard absent from his command, when sent with orders by Major Gen. Matthew?

A. He cannot precisely say, as he did not see when Lieut. Col. Howard went off; but he thinks, about twenty minutes, or not exceeding half an hour.

Q. What were the expressions that Lieut. Col. Thomas made use of to Lieut. Col. Gordon, when he ascended the heights, which he (the Witness) terms *rough*?

A. He cannot exactly recollect all that was said by Lieut. Col. Thomas on this occasion; as Col. Thomas was in a great passion, and, when in that situation, speaks thick: but one of the expressions was, "Where have you been skulking? I have sent every where for orders, but could not find you."

Q. At the time that Lieut. Col. Thomas made use of this expression, did Col. Gordon make him any answer, or appear to have heard and understood what Lieut. Col. Thomas said?

A. Lieut. Col. Gordon may not have heard the whole of what Lieut. Col. Thomas said, though he certainly heard the purport of it; as he answered, "That he had been waiting in the rear for orders."

Q. Has he (the Witness) ever heard Lieut. Col.

Col. Thomas, in the absence of Lieut. Col. Gordon, between the 23d of June and the 30th of July, speak of the conduct of Lieut. Col. Gordon on the 23d of June?

A. He never had any conversation with Lieut. Col. Thomas, upon this subject, directly or indirectly, during that time.

Adjutant ROBERT WILSON, of the first battalion of Foot-Guards, being duly sworn, was examined.

Q: (*by Lieut. Col. Thomas.*) Did he (the Witness) see Lieut. Col. Gordon, all the day of the 23d of June, with the first battalion?

A. No.

Q: Did Lieut. Col. Gordon take possession of the heights of Springfield?

A. Not with the first battalion.

Q: Did Lieut. Col. Gordon give any orders to the Witness, at the time they took possession of those heights, to look for Lieut. Col. Howard?

A. No; he received an order from Lieut. Col. Stewart, to look for Major Gen. Matthew, or Lieut. Col. Howard.

Q: Does he recollect to have heard a second cannonade from the Rebels on the first battalion, when they were formed in the orchard near Springfield?

A. There were two or three cannon-shots fired from the enemy, when the arms were piled, and the men lying down in the orchard; but none of those shots came near them.

Q: Does he (the Witness) know whether Lieut. Col. Gordon knew of Lieut. Col. Howard

ard being absent from the brigade, before he returned?

A. It is impossible for him (the Witness) to know whether he did or not.

Q. Did he see Lieut. Col. Howard leave the brigade; and from what part of it did he go?

A. He saw Lieut. Col. Howard leave the brigade; and he went from the left flank of the first battalion.

Q. Was the brigade then drawn up?

A. No; they were marching in platoons.

Q. From the flank of what company of the first battalion did Lieut. Col. Howard set out?

A. It was not far from the front of the battalion; it might be about the flank of the second company.

Q. Did he at this time, that Lieut. Col. Howard was sent off by Major Gen. Matthew, see Col. Gordon with any part of the first battalion?

A. He did not.

Q. Does he recollect to have seen Lieut. Col. Gordon, when they halted near the orchard where Lieut. Col. Barton's corps was engaged?

A. He did not see Lieut. Col. Gordon at that time.

Q. What length of time elapsed between this period, and that of Lieut. Col. Howard leaving the brigade?

A. It might be an hour, more or less; he cannot speak precisely, as he did not look at a watch.

Q. Did not he (the Witness) go to Lieut. Col. Gordon for orders, and report afterwards to Lieut. Col. Thomas, that he could not find him?

A. By order of Lieut. Col. Thomas, he went through the first battalion, to look for Lieut. Col. Gordon; but he was not then with the battalion.

Q. Does he (the Witness) know of Lieut. Col. Thomas having sent any other person, at any other period of time, to look for Lieut. Col. Gordon; and what was the report?

A. Not in his (the Witness's) hearing.

Q. At what time, previous to their taking possession of the heights of Springfield, did he (the Witness) see Lieut. Col. Gordon?

A. He does not recollect having seen him for an hour and a half before; but he does not mean to say, that he was not with the battalion during that time.

Q. Does he recollect to have seen Lieut. Col. Gordon, on the return from Springfield, in any other part of the brigade, except the front of the first battalion?

A. He (the Witness) was in the rear of the first battalion the whole time, and did not see Lieut. Col. Gordon; whether he was in front, or not, he cannot say.

Q. Was the fire of the enemy, during the march from Springfield to Elizabeth-Town, on the front or rear of the column?

A. There was some firing from the enemy upon their flank and rear; that on the flank was but trifling, but there was a good deal on the rear.

Q. Was there any firing in front?

A. None that he knows of.

Q. (*by Lieut. Col. Gordon.*) In the absence of Lieut. Col. Howard, who commands the brigade of Guards?

A. The

A. The officer next in seniority, he should suppose.

Q. Who was the officer next in seniority to Col. Howard on the 23d of June?

A. If Lieut. Col. Gordon had been present, he would have been; but, in the absence of Lieut. Colonels Howard and Gordon, it fell to Lieut. Col. Schutz.

Q. Who gave the order for the six battalion companies of the brigade of Guards to lie upon their arms, under the bushes, on the heights beyond Springfield?

A. He does not know that the men lay upon their arms there, being sent on a message by Lieut. Col. Stewart to find Gen. Matthew, or Lieut. Col. Howard.

Q. Did he leave the heights to go to report, and for orders, before the whole brigade was formed upon them?

A. The whole brigade was formed some minutes before he was sent for orders.

Q. Had the firing from the enemy ceased at this period?

A. It had.

Q. When did he meet Lieut. Col. Howard, after he left those heights?

A. He met him at the bottom of the hill, coming from Lieut. Col. Simcoe, to whom he had been with orders.

Q. As nearly as he can recollect, how long time elapsed, from Lieut. Col. Howard leaving the brigade to go to Lieut. Col. Simcoe, till he saw him again.

A. He thinks, not more than twenty minutes.

Q. In the second position of the brigade along the

the rails, did he not see Lieut. Col. Gordon go to Lieut. Col. Howard, then refreshing himself in a kind of hollow, under a tree, and say, that, with his permission, it was necessary to change the position of the first battalion? And did not Lieut. Col. Howard answer, that they were posted by Major Gen. Matthew, and must remain; and Lieut. Col. Gordon reply, that the commanding officer on the spot, he thought, might alter the position, if he found it necessary; the first battalion being in a situation to be enfiladed, or flanked by cannon coming down on their left; and further desire Col. Howard to look at the situation? And did not Col. Gordon, upon Col. Howard approving of it, order the officers to their companies, and make the alteration, by throwing the left to the town, and the right to the rails obliquely?

A. He does not recollect any of this conversation; but he remembers the first and second companies being ordered to stand to their arms; and they afterwards changed their position.

Q. Was not the firing in the rear of the column at a great distance from the rear of the brigade of Guards, and upon the corps that covered their rear?

A. There was no corps in the rear of the Guards, but the Queen's Rangers, that he knows of; it therefore could not be a great way, as this corps were closely following the Guards.

Q. Were the flank companies of the Guards close to the six battalion companies?

A. Yes, they were.

Q. How far does he suppose the rear company of the Guards was from the nearest division of the Queen's Rangers?

A. When

A. When the column was first formed, and marched from Springfield, there was a wide distance between them; but, upon the Witness reporting this to Lieut. Col. Howard, he halted the brigade of Guards, till the Witness informed him that the Queen's Rangers were close up.

Q. Did he hear of any officer, or men, of the six battalion companies, being wounded, till they came near the Rebel Governor Livingston's house?

A. He heard of no body but Lieut. Col. Gordon.

Q. Were there any men of the brigade of Guards, besides Lieut. Col. Gordon, wounded on the 23d of June, except when they passed beyond the town in taking possession of the heights?

A. No.

Q. (by the Court.) Did he see Lieut. Col. Gordon, between the time at which the two companies were detached, and that of taking possession of the heights of Springfield?

A. According to the best of his knowledge, he did not.

Q. Did he see Lieut. Col. Gordon on the heights of Springfield?

A. According to the best of his recollection, he met Col. Gordon going up the hill, as he (the Witness) was going down to look for Col. Howard, by order of Lieut. Col. Stewart.

Q. When Lieut. Col. Thomas sent him to look for Lieut. Col. Gordon, for orders, did he search for him through the whole brigade?

A. He did not; he looked for him in the first battalion only.

Q. At

Q. At the time that Lieut. Col. Howard was sent off, by Gen. Matthew, was any body sent to Lieut. Col. Gordon, to inform him that he commanded the brigade of Guards?

A. Not that he knows of

Q. When Lieut. Col. Thomas sent him to Lieut. Col. Gordon for orders, did he (the Witness) know that Lieut. Col. Howard was away?

A. He did.

Q. Did he ever hear Lieut. Col. Thomas, between the 23d of June and 30th of July, speak of the conduct of Lieut. Col. Gordon on the 23d of June?

A. Yes, several times.

Q. What were the terms in which he spoke of it, and to what purport.

A. He has often heard Lieut. Col. Thomas say, in a very *public* manner, on the parade, that Lieut. Col. Gordon did not behave like a soldier and a man before the enemy.

Q. Did he ever hear Lieut. Col. Thomas say, that he commanded the Guards on the 23d of June?

A. He never did.

Q. (by Lieut. Col. Gordon.) Did not Lieut. Col. Thomas do duty under Lieut. Col. Gordon, from the time he joined his command on the heights of Fordham, till the 2d of August, when Lieut. Col. Gordon put him in arrest?

A. Lieut. Col. Thomas did duty on the heights of Fordham, after Lieut. Col. Gordon returned hither; he cannot speak as to the length of time.

Q. Does he know of Lieut. Col. Thomas having applied for, and obtained, leave from Lieut.

Lieut. Col. Gordon, to go to New-York, during this period?

A. He does not know whether he did or not.

Sergeant Major THOMAS JARMAN, of the first battalion of the brigade of Guards, already sworn, was again examined.

Q. (*by Lieut. Col. Thomas.*) Does he recollect to have seen Lieut. Col. Gordon near the orchard, where Col. Barton's corps was engaged on the 23d of June?

A. He does not.

Q. Whether Lieut. Col. Gordon did not at this time command the first battalion?

A. Yes; he (*the Witness*) always understood it as such.

Q. Does he recollect Lieut. Col. Thomas sending to Lieut. Col. Gordon, for orders, from the orchard?

A. Yes.

Q. Does he recollect whom Lieut. Col. Thomas sent?

A. He sent him (*the Witness*).

Q. Did he (*the Witness*) see Lieut. Col. Gordon?

A. He did not.

Q. Does he recollect to have seen Lieut. Col. Gordon, when the first battalion took possession of the heights of Springfield?

A. He did not see him.

Q. Does he recollect Lieut. Col. Thomas sending him (*the Witness*) for orders, previous to their ascending those heights; and to whom did he send him?

A. Lieut. Col. Thomas sent him for orders, at that

that time, to the commanding officer of the first battalion: this was the expression made use of by Lieut. Col. Thomas.

Q. What report did he (the Witness) make to Lieut. Col. Thomas?

A. That he could not see the commanding officer.

Q. Did he see Col. Gordon at any period of time, from that at which they went into the orchard, till after they had ascended the heights of Springfield?

A. He did not see him till some time after the battalion was formed on the heights: the heights he means, are those where they took another position, after leaving the orchard.

Q. Did Lieut. Col. Gordon, or Lieut. Col. Stewart, form the first battalion on those heights?

A. He saw Lieut. Col. Stewart form the battalion.

Q. Did he see Lieut. Col. Gordon ascending the heights?

A. He does not recollect that he did.

Q. How long after the battalion was formed on the hill, does he recollect to have seen Col. Gordon sitting on a stone under it?

A. A very little time afterwards; it might be about five or six minutes.

Q. Does he remember to have seen Lieut. Col. Gordon cross a field on the left of the road, through which the column had marched towards the heights of Springfield?

A. He does not.

Q. Does he remember the time then Col. Howard joined the brigade?

A. He does not.

Q. What

Q. What distance of time elapsed, between their forming in the orchard, and his (the Witness's) afterwards seeing Lieut. Col. Gordon?

A. It might be about three quarters of an hour, or near an hour; he does not think it was quite an hour.

Q. (by Lieut. Col. Gordon.) If Lieut. Col. Howard is absent, by going on a message, or by a wound received, who commands the brigade of Guards?

A. Lieut. Col. Gordon.

Q. Whilst he (the Witness) was in the orchard, was it not with one company detached?

A. With two companies; the first and second.

Q. Was not the first company detached singly?

A. Yes; but it was afterwards joined by the second.

Q. Did not he (the Witness) know, when Lieut. Col. Howard went off with the message, that the command devolved on Lieut. Col. Gordon, and that he received orders from Gen. Matthew?

A. He did not know that Col. Howard had gone on any message.

Q. Did he see Lieut. Col. Gordon on the heights, giving orders, after they were taken possession of?

A. He did not.

Q. Were not the whole brigade ordered to lie upon their arms; under the bushes, in consequence of the fatigue of a rapid march?

A. The men lay down upon their arms; but he (the Witness) did not hear such an order given, though there may have been.

Q. Did he see Lieut. Col. Howard at any per-

riod of time, whilst the six battalion companies were on those heights ?

A. He did not.

Q. Who had proper authority then to give orders to the whole ?

A. Lieut. Col. Gordon, he supposes, or the officer commanding, if Lieut. Col. Gordon was not there.

Q. Where did he see Lieut. Col. Howard resume his command, after they had taken possession of the heights ?

A. The place he next saw Col. Howard at, was where they took a third position. The first position, he looks upon, was that in the orchard, the second on the heights of Springfield, and the third where they halted, near the town of Springfield.

Q. Did not Major Gen. Matthew give his orders, and make his disposition in this last position, near the town of Springfield ?

A. He cannot answer that question, as he does not know what orders Gen. Matthew gave.

Q. Did he see Gen. Matthew there ?

A. He does not recollect seeing him there.

Q. At the time that he saw Lieut. Col. Gordon sitting down under the hill, were not the six battalion companies lying on their arms ?

A. Some of the men were sitting, and others standing.

Q. Was not the place where Lieut. Col. Gordon sat, towards the enemy ?

A. He cannot tell whether the King's troops had taken possession of the town of Springfield at the time : if the enemy were in possession of it, the place Col. Gordon was sitting at must have been towards them, as it was on the Springfield

field side of the hill; but it was not towards the enemy that the brigade were fronting.

Q. Was there any firing on the six battalion companies, from the enemy, at the time they were formed upon the heights?

A. A few musket-shots; about a dozen or so.

Q. Is he sure that the shots he heard were fired from the enemy?

A. He has reason to think so, as he had nearly been killed by one of them.

Q. Were not the officers and men all standing or lying promiscuously upon the top and side of the hill?

A. Yes.

Q. (*by the Court.*) Is there a Serjeant-Major to each battalion?

A. Yes.

Q. Did he (the Witness) when he was sent for orders, seek for Col. Gordon in the first battalion only, or in both battalions?

A. In the first battalion only.

Q. When Lieut. Col. Thomas sent him to apply to the commanding officer of the battalion for orders, whom did he look upon as commanding officer?

A. Lieut. Col. Gordon.

Q. Where did he look for that commanding officer?

A. In the three companies of the first battalion: he did not know that Col. Howard was absent, and therefore he looked upon Col. Gordon as commanding that battalion.

Q. How long was it between his being sent the second time to Lieut. Col. Gordon, for orders, and his seeing him sitting on the side of the hill?

A. He does not think that it exceeded twenty minutes.

Q. Was the place that he saw Col. Gordon sitting at, on the flank, front, or rear, of the brigade?

A. In the rear of the brigade.

Q. (by Lieut. Col. Gordon.) How far was Lieut. Col. Gordon from the nearest of the men?

A. It might be about forty or fifty yards; he cannot think it exceeded that.

Q. Was it not very hot and sultry at that period?

A. Yes, it was.

Q. Was there not a very heavy fire at this time to the left of the town?

A. He does not recollect to have heard much firing at this time.

Q. (by Lieut. Col. Thomas.) Whether or not Lieut. Col. Gordon had not paid particular attention to him (the Witness) since the 2d of August?

A. Col. Gordon has been very good to him, but never once mentioned *this* affair to him.

Q. Had Col. Gordon been particularly attentive to him previous to that day?

A. Col. Gordon had taken the command of the first battalion but a few days before this, and therefore could not be very attentive to him.

Q. Has not Col. Gordon, since that period, made him (the Witness) presents?

A. He has.

Q. (by the Court.) Did Lieut. Col. Gordon make those presents upon any particular conditions,

tions, or tell him that he expected any particular return for them?

A. No, he never did.

Q. Was Springfield in the front, flank, or rear, of the six battalion companies, when they were formed on the heights?

A. In the rear.

Adjutant JAMES COLQUHOUN, of the second battalion of Foot-Guards, being duly sworn, was examined.

Q. (*by Lieut. Col. Thomas.*) Does he remember the brigade of Guards to have halted near an orchard where Col. Barton's corps was engaged?

A. He does not.

Q. Does he remember to have seen Col. Gordon with the second battalion, on the 23d of June?

A. Yes.

Q. At what particular place?

A. On the left of the sixth company, on the road leading to the heights of Springfield.

Q. Did Lieut. Col. Gordon give any orders to the second battalion that day?

A. He (the Witness) did not hear of any.

Q. Does he recollect to have seen Lieut. Col. Gordon take possession of the heights of Springfield?

A. He did not see Lieut. Col. Gordon there.

Q. Does he recollect to have seen Col. Gordon, during the firing of the Rebels, in any part of the road?

A. There was firing on the *right* flank, when he saw Lieut. Col. Gordon.

Q. In

Q. In what part of the battalion was Lieut, Col. Gordon at that time?

A. On the left flank of the sixth company.

Q. Was Lieut. Col. Gordon on horseback, or on foot?

A. He was on foot.

Q. Was he standing still, or walking?

A. He was standing still at the time he saw him.

Q. In what particular position?

A. He was standing in a loose manner, with his hat off, wiping his face.

Q. Did the second battalion pass him at that time?

A. Yes.

Q. Does he (the Witness) recollect to have seen Col. Gordon from that time till they ascended the heights of Springfield?

A. He did not see him.

Q. How long was the *second* battalion formed upon the heights before he saw Lieut. Col. Gordon?

A. He does not recollect seeing Col. Gordon there.

Q. At the time of going along the road, when the right flank was fired upon, did he know that Col. Gordon commanded the six companies?

A. He did not.

Q. Did he know that Col. Howard was sent on a message, and had quitted his command?

A. He did not.

Q. Did not the six battalion companies march by divisions in column, following successively in a direct line?

A. Yes.

Q. Was not the fire from the enemy a flank fire, on the right, from the hanging wood, under the fire-signal?

A. It was upon the right flank of the second battalion.

Q. Was not one division, as it passed, as much exposed to the fire as another?

A. He cannot say that, as the farther they advanced, the heavier the fire became.

Q. Did not the whole fire, as they went along, come upon the right flank, till they ascended the heights?

A. As they came nearer the heights, he thinks the fire was more upon the front.

Q. Did not the six battalion companies ascend the hill in divisions, following close after one another?

A. Yes.

Q. After the heights were taken possession of, did he not hear an order given, for the men to lie down under the bushes, to protect themselves from the heat?

A. He does not recollect hearing an order for that purpose.

Q. Did not the greatest part of the men lie on their arms, under the bushes?

A. A number of men lay down; he cannot say the greatest part.

Q. Did he see Lieut. Col. Howard, at any period, on the heights of Springfield?

A. He did.

Q. Was it before they moved from the heights, to take another position near the rails?

A. Yes.

Q. Was he on the right, left, or center, of the six companies?

A. According to the best of his recollection, he was nighest to the center.

Q. How long had the heights been taken possession of, before he saw Col. Howard there?

A. Five minutes, or more.

Q. Did Col. Howard give orders for the six companies to descend the heights, to take the second position?

A. He does not know who gave the order for that purpose.

Q. Did he know of Adjutant Wilson being sent to look for Col. Howard, or Gen. Matthew?

A. He did not.

Q. Did he see Col. Howard descend with the six battalion companies?

A. He did.

Q. Was Col. Howard on foot, or on horseback?

A. On foot.

Q. (*by the Court.*) Were any of the men of the Guards killed, or wounded, in ascending the heights?

A. Yes, there were two men wounded.

Q. Was this before or after they passed Col. Gordon?

A. He does not recollect.

Q. (*by Col. Gordon.*) Were not the flankers upon the right, towards the rear, driven in upon the battalion, by the heavy fire of the enemy, while in the road by the rails?

A. He did not see them driven in.

Q. Did he see Col. Gordon speaking to Col. Lovelace, in the second battalion, at the time of this heavy fire upon the right?

A. He

A. He saw Col. Gordon, and heard him make an answer to some gentleman, but did not know who it was.

Q. Was this not in an interval between two divisions?

A. He does not recollect its happening in an interval between two divisions.

Q. Where then did it happen?

A. Near the rear of the second battalion.

Q. Was not the weather very hot at this time?

A. Yes.

Q. Can he recollect the answer he heard Col. Gordon make?

A. He thinks Col. Gordon said that it was hot weather.

Q. Were they not very near the heights at that period?

A. No, they were at a great distance from them.

Q. Did not the divisions follow in very close order, and with very little interval?

A. He does not think they were very close.

Q. Was there room for the divisions to form?

A. Yes.

Q. (*by the Court.*) With what part of the second battalion was the Witness, when he perceived Col. Gordon wiping his face?

A. On the left flank of the sixth company.

Q. Did he (the Witness) continue in the same situation, till they took possession of the heights?

A. He did not.

Lieut. AUGUSTUS O'HARA, of the Royal Artillery, being duly sworn, was examined.

L

Q. (*by*

Q. (by Lieut. Col. Thomas.) Does he recollect to have seen Col. Gordon on the 23d of June?

A. He remembers to have seen him three times.

Q. Does he recollect the brigade of Guards having halted near an orchard, where Col. Barton's corps was engaged?

A. Yes, he does.

Q. Does he recollect having seen Col. Gordon in the march from thence to the heights of Springfield?

A. He remembers to have seen him twice.

Q. Was he on horseback, or on foot?

A. He was on foot, at both times.

Q. Where did he see him the first time?

A. He saw him upon the left of the road, where his (the Witness's) guns were in action.

Q. Was Col. Gordon in the road, or out of the road?

A. He was out of the road, with his guns.

Q. Was he marching, or did he stand still?

A. At the time he speaks of, the whole line had halted, whilst the guns were firing.

Q. Did he see him afterwards?

A. Yes, once.

Q. In what place?

A. On the left of a road, behind a hedge, as the first battalion was moving on.

Q. Was Col. Gordon at that time standing still?

A. No, he was moving on.

Q. In what particular position?

A. He appeared to him to be moving, almost on his hands and feet.

Q. Was there any fire from the Rebels at that particular time?

A. A very heavy fire.

Q. Does he recollect to have seen Col. Gordon, from that time, till after they were formed on the heights of Springfield?

A. He does not.

Q. (*by the Court.*) Did he see any man killed, or wounded, by the heavy fire he speaks of?

A. He (*the Witness*) had one man wounded, and several shots went into his gun-carriages.

Q. (*by Col. Gordon.*) At the time that Col. Gordon was, as he has said, standing by his (*the Witness's*) guns, when the column was halted, did not Col. Gordon point out a knot of Rebels, and say, that by pointing his guns thither, his fire would be very efficacious, and kill a great many of them?

A. Col. Gordon gave him a great many directions; but he did not pay any attention to them, as he thought himself the best judge of the firing of his own guns.

Q. Did not he (*the Witness*), upon Col. Gordon making an apology for interfering, say that he had very little ammunition left?

A. He did.

Q. Was there not a little stone wall, with a single rail at top, between the road and where his guns were?

A. There was.

Q. Was it possible to cross and recross this wall, without using hands and feet, in fire or out of fire?

A. He (*the Witness*) could have vaulted over it with the assistance of a stick.

Q. Had Col. Gordon a stick to help him over?

A. He does not recollect.

[The Witness begged leave to observe to the Court, that it was not at this stone wall that he saw Col. Gordon, as he said before, nearly on his hands and feet; it was behind a hedge.]

Q. After receiving Gen. Matthew's orders in the bottom, were not his (the Witness's) guns in confusion; and did he not halt?

A. He was obliged to draw one of his guns some hundred yards by men; which occasioned his limbers with the ammunition to be left behind: he therefore halted the guns till the ammunition could be brought up.

Q. Were not his guns attached to the brigade of Guards?

A. Yes.

Q. Who commanded the brigade of Guards in the absence of Col. Howard?

A. He does not know.

Q. Did not the six companies of the brigade of Guards, whilst in this sort of confusion on account of the limbers, go on briskly, and leave the guns in the road?

A. He does not believe that the whole of the six companies passed whilst the guns were halted.

Q. Did he see Col. Gordon, after he passed his guns, till they ascended the heights?

A. He never saw him pass at all by the guns.

Q. Whose orders did he think himself obliged to obey that day?

A. Lieut. Col. Howard's.

Q. (*by the Court.*) Who was near him (the Witness) at the time that he saw Col. Gordon almost on his hands and feet?

A. He

A. He saw Lieut. Col. Thomas, with about seventy men of the Guards, and his (the Witness's) own detachment; and, he thinks, Adjutant Wilson.

Q. Where was the brigade of Guards at that time?

A. They were very much fatigued, and coming on in the rear.

Q. When, and to whom, did he first mention the circumstance of seeing Col. Gordon almost on his hands and feet?

A. He don't recollect.

Q. Did he ever mention it, from the day on which it happened, till yesterday, when he was called upon at this Court-Martial?

A. He believes that he has.

Q. Can he say, from his own knowledge, whether any of those who were near him saw Col. Gordon in that posture?

A. No, he cannot.

Q. Did he hear any conversation, on the 23d of June, between Lieut. Col. Gordon and Lieut. Col. Thomas?

A. He did not.

Q. Has he ever, since the 23d of June, heard Col. Thomas speak of Lieut. Col. Gordon's conduct on that day?

A. Yes.

Q. Was it previous to the 27th of July?

A. No; what he heard Lieut. Col. Thomas say, was subsequent to Col. Gordon's return to the brigade on the 27th of July.

Q. Did he ever hear Col. Thomas say, that he commanded the Guards on the 23d of June, when they ascended the heights of Springfield?

A. He

A. He never did.

Q. Does he know how long Col. Gordon remained in the posture he has mentioned; of being almost on his hands and feet?

A. He saw him about half a minute.

Q. Does he mean that he saw him half a minute in that posture, or that Col. Gordon remained only half a minute thus situated?

A. He cannot tell how long he remained thus, as it was by the greatest chance he saw him at all.

Q. Did he observe Col. Gordon change this posture?

A. He did not; as he was too much taken up with his own duty, to attend to him above half a minute.

Q. At what distance was the brigade of Guards from the hedge, at the time he mentions to have seen Col. Gordon in the situation he has described?

A. He has already observed, that he only saw Lieut. Col. Thomas, with about seventy men, at the time; the hedge was about five yards from them.

Q. Does he know whether Lieut. Col. Thomas was acquainted with Lieut. Col. Gordon's situation that day?

A. According to the best of his knowledge, he thinks that he was not; as Col. Thomas was too much engaged in his own duty, to attend to him.

Q. Was the hedge which he describes, and near which he saw Col. Gordon, near the heights they were then pushing for?

A. Yes.

Q. Can

Q. Can he ascertain the distance?

A. About three hundred yards.

Q. (*by Lieut. Col. Gordon.*) Was Lieut. Col. Thomas at the head of the column, at the period that he saw Col. Gordon stooping under a hedge?

A. He was.

Q. How near does he suppose Col. Gordon was to Col. Thomas?

A. About seventy yards, according to the best of his recollection.

Q. Were not the companies of the second battalion, the rear of the brigade, two or three hundred yards behind?

A. He cannot tell.

Q. Was not the brigade marching in divisions, successively following one another?

A. He cannot tell.

Q. How near were his (*the Witness's*) guns to the brigade?

A. His guns were in the front of Col. Thomas's party, which was at the head of the brigade.

Q. Did he, in the course of looking about, see the rear of the column?

A. No.

Q. Did he know that there was a company of the first battalion detached into that orchard, when he saw Col. Gordon within seventy yards of Lieut. Col. Thomas?

A. He has not said that it was an orchard; he did not know that there was a company detached there at all.

Q. Was it before or after his (*the Witness's*) guns were in disorder, by the limbers being broke,

broke, that he saw Col. Gordon in the situation he has described?

A. His limbers were never broke, nor were his guns in disorder the whole day.

Q. Was it before or after the guns halted, in going up a hill, that he saw Col. Gordon in the situation he has mentioned, behind a hedge?

A. He does not recollect.

Q. (by the Court.) Does he mean to say that Col. Gordon was about seventy yards in the front or rear of Col. Thomas?

A. He means to say, that Col. Thomas was in the road, in front; and Col. Gordon out of the road, about seventy yards in the rear.

Q. (by Col. Gordon.) Was the hedge under which he saw Col. Gordon, on the right or left of the column?

A. On the left.

Q. (by the Court.) Were there any other troops between the Enemy and the Guards, when they (the Guards) took possession of the heights of Springfield?

A. He does not know.

Q. Was Col. Gordon, at the time he was in this posture behind a hedge, as he describes, sheltered from the Enemy's fire?

A. Yes, in some measure; he cannot say that he was absolutely so altogether.

Q. (by Col. Gordon.) Was the hedge a thick or thin one?

A. It appeared to him to be a thick one.

Q. Was it a high hedge?

A. He did not observe the height of it.

Q. Was it the height of a man?

A. He cannot tell.

Q. Was

Q. Was Col. Gordon moving, in the situation he has described, in the same direction that the troops were going?

A. Yes.

Q. Was the field in which Col. Gordon was thus situated, the same field that his guns were drawn up in?

A. No.

Q. Were his guns then in the road, going forward?

A. He has already observed, that they were moving on at the head of the column.

Q. Was the hedge close to the road?

A. Yes.

Q. Did he see Col. Howard near that period of time?

A. No.

Serjeant-Major JARMAN, already sworn, was again examined.

Q. Did he meet Serjeant Curtis as he (the Witness) was going from Col. Thomas to Col. Gordon for orders?

A. As he was returning with an answer to Col. Thomas, he met Serjeant Curtis in the ploughed field leading to the orchard: he asked him where he was going; and he answered, that he was going from Lieut. Col. (then Capt.) Thomas to Col. Gordon for orders: the Witness replied, that he had been on the same errand; and then returned to the column, without carrying an answer to Col. Thomas, thinking that Serjeant Curtis's carrying one was sufficient.

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Capt.

Capt. COLLINS, Major of Brigade, already sworn, was again examined.

Q. Did not Serjeant Curtis mention to him (the Witness) his having been sent by Col. Thomas to Col. Howard for orders?

A. He does not recollect any such thing: a Serjeant came to him for orders; but he does not remember whether it was Serjeant Curtis.

Q. Did he (the Witness), in consequence of the message of this Serjeant, give orders to Lieut. Col. Thomas?

A. Not in consequence of the message he received by the Serjeant."

The Court adjourned till Monday morning,
at ten o'clock.

Monday, August 26, 1782.

THE Court met, pursuant to adjournment; but on the Deputy JUDGE-ADVOCATE informing them, that he had not been able to procure the Witness called John Barnes, whom he was in search of, the Court was pleased to adjourn till ten o'clock next morning.

Tuesday,

Tuesday, August 27, 1782.

THE Court being met, pursuant to adjournment,

THE Deputy JUDGE-ADVOCATE observed to the Court, that, from the length of time which had intervened since the matter now before them had first arisen, many necessary Witnesses had died, and been dispersed; and this had induced his Majesty most graciously to consent to the testimony given, on the Tryal of Lieut. Col. Thomas, by such as came under this description, to be admitted as evidence on Col. Gordon's Tryal: and there being other Witnesses, either dead or dispersed, who would have been produced on this Tryal, although not deemed necessary on that of Lieut. Col. Thomas; the Deputy Judge-Advocate had to thank the Court for the indulgence, with respect to time, which they had given him, in order to search for a certain John Barnes, whom he had some expectations of being able to find; but being disappointed therein, he (the Deputy Judge-Advocate) declined intruding farther on the patience of the Court, and therefore closed the prosecution, with reserving to himself the right of observing upon the evidence in general, as soon as the whole of it had been gone through, and also of controverting, by Witnesses, any new matter introduced by the Prisoner in his Defence.

Col.

Col. GORDON, having then requested of the Court, to have a reasonable time allowed him to prepare for his defence, and fixed on the Friday ensuing, the Court consented thereto, and

Adjourned to ten o'clock on Friday morning.

Friday, August 30, 1782.

THE Court being met, pursuant to adjournment,

THE Honourable Col. GORDON opened his Defence in the following address to the Court :

" Mr. PRESIDENT, and GENTLEMEN of
" the COURT,

" I am now to enter upon my defence, against a charge *originally promoted by Lieut. Col. Thomas*, but, in the present instance, prosecuted by the Deputy Judge Advocate against me :

" A charge, which (independent of its more penal consequences) so immediately strikes at my profession as an officer, and brands my character with so black and disgraceful a stigma, that I must have been lost to *every delicacy*, if I could regard it without emotion ; and to *every sense of honour*, if I had not resolved to refute the calumny.

" I shall not attempt to particularise my feelings

ings upon this occasion—Your own generous dispositions will intimate their nature, and suggest their origin.

“ Long, Gentlemen, have I laboured under the reproach which this charge has occasioned; and, unmerited as it was, I should have suffered with justice, had I not *anxiously solicited* an opportunity to remove it.—A variety of causes, arising from the nature of the service, had long concurred to frustrate all endeavours for that purpose ;—but, at length, my wishes have succeeded, and I can now, with peculiar satisfaction, repose my life and honour upon the candour, integrity, and discernment of this Court.

“ I stand here, Gentlemen, a prisoner upon tryal, charged with not having done my duty before the Enemy on the 23d of June, 1780.

“ In support of this *general* charge, several Witnesses have been examined, and, among others, Lieut. Col. Thomas himself, who first devised the accusation, though he has declined appearing as the prosecutor of it ;—and in addition to such testimony, the depositions of several Witnesses, sworn on the tryal of Lieut. Col. Thomas, have been *read*, with which the Judge Advocate closed the evidence in support of the prosecution.

“ I shall not, at present, examine this evidence, but proceed to my defence, in which I shall, with your permission, pursue the following method.

“ I shall, first, cross-examine the Witnesses that have been sworn on the part of the Prosecutor, or such of them as I think it may be material again to question.

“ I shall

" I shall then produce such other Witnesses, and testimony, as will shew my whole behaviour on the 23d of June, 1780; in its true and genuine colours. And,

" Lastly, I shall, as soon as I can be prepared for that purpose, state and compare the evidence, both for and against me, in as compendious a manner, as a regard to truth, and my own justification, will any way allow.

" If, in the end, I shall be able to demonstrate, that the several points attempted to be proved, in support of the prosecution, either could not have existed; or, if some of them did exist, that those *particular instances* were perfectly reconcileable with the *fact*, that I did my duty before the enemy on the 23d of June, 1780, I cannot doubt that I shall obtain a sentence of acquittal:—And if I shall also prove, that, upon that day, I fulfilled the part of an *active, zealous, and vigilant officer*, I flatter myself that my acquittal will be of the most honourable nature."

The following Witnesses were examined in support of the defence.

THOMAS HOBBS, already sworn.

Q. (*by Col. Gordon.*) Where was the halt of the brigade of Guards that he speaks of, when he says he was repairing and mending the trappings of his horse, and canteens?

A. In the road leading to the heights of Springfield.

Q. What does he suppose was the distance from the place of the halt, to the heights of Springfield, where he says he saw the Guards, some sitting, some standing?

A. He cannot tell.

Q. How far was this place from the orchard, where Col. Thomas was detached in support of Col. Barton?

A. He did not know of Col. Thomas being detached.

Q. How far was the place of halting to the bridge?

A. He did not see or pass any bridge, at that time.

Q. For what space of time was the brigade of Guards then halted?

A. About half an hour, in the road leading to the heights of Springfield.

Q. How long does he think he was employed in mending and repairing those trappings, all together?

A. Better than half an hour.

Q. How long did he continue employed in those repairs, from the time the brigade of Guards began to move on, after the halt, until he followed the Hussars; and did he continue the same road or post they took?

A. About ten minutes after the brigade moved on, before he followed the Hussars; and he continued the same road they (the Hussars) took.

Q. Was he on horseback, or foot, when he followed the Hussars; and did he move slowly or briskly on?

A. He was on foot, and leading the horse as fast as the horse could walk.

Q. What time does he suppose elapsed, from the time of his leaving the place where he repaired the trappings, until he passed the brook?

A. It might have been an hour, or more.

Q. Does

Q. Does he know what officer commanded the Hussars that passed; and of what number did they consist, to the best of his recollection?

A. He does not know the officer that commanded, nor the number they (the Hussars) consisted of.

Q. Did the Hussars pass near where Col. Gordon was standing; and were they British, or German troops?

A. They passed where Col. Gordon was standing, before he (the Deponent) got to the ground, (meaning an inclosure); and they were not British troops.

Q. Were they German, or Provincial troops?

A. He believed they were German.

Q. How near was he to Col. Gordon when he passed him; and did Col. Gordon speak to him, or did he speak to Col. Gordon, at that time?

A. He might be distant fifty yards or more, when he passed Col. Gordon; and neither of them spoke to the other.

Q. What was the colour of the uniform of those Hussars; and what caps had they on?

A. The colour of their uniform he cannot recollect; but, to the best of his recollection, they had on high white caps.

Q. What kind of a hedge was it, behind which he saw Col. Gordon; was it a thick hedge; what was the height of it; and was the hedge made of thorn, or privet, or what other wood?

A. He cannot tell the height of the hedge, or what wood it was made of; it was a thickish hedge.

Q. What distance was that hedge from the brook, where he passed it, or from the heights where he afterwards saw the Guards?

A. The

A. The distance from the hedge to the brook, might be about three quarters of a mile, or less, and from the brook to the heights, half a mile, or more.

Q. What does he suppose was the distance from where he repainted his trappings, to the hedge?

A. Not a quarter of a mile.

Q. How long might it have been from the time that the Guards passed him, after their halt, to the time of seeing Col. Gordon behind the hedge?

A. The time he cannot recollect.

Q. Did the hedge he mentioned, extend round the field of wheat; and how large was the field of wheat, and how many acres of ground does he think it inclosed?

A. The hedge went across, with a kind of turn to the right; he cannot tell how large the field was, or how many acres of ground the inclosure consisted of.

Q. How long has he been acquainted with the person called John Barnes; how long had he been with the brigade of Guards, before the 23d of June, 1780; and how long did he (Thomas Hobbs) continue with them afterwards?

A. He was first acquainted with him in the Jerseys, about the 8th or 9th of June, 1780; he does not remember his being with the brigade, till they went to the Jerseys; he continued with the brigade till they left Valentine's hill, about a month afterwards.

Q. When, and where, and with whom, did he last see John Barnes; and had he (John Barnes) any acquaintance with any other person

N belonging

belonging to the brigade of Guards, at the time he mentions ; and has he heard any other person, and who, say they saw him ?

A. He met him in the street last summer ; went to a tavern with him, and had a bottle of porter : he was acquainted with many ; he (John Barnes) must have known Col. Howard's servants, as he lived with them ; and he thinks, but is not certain, he might have known Col. Gordon's servants.

Q. Does he know what occasioned John Barnes to be so far in the rear of the Guards, at that time ?

A. He does not.

Q. Did John Barnes, then also, see Col. Gordon behind the hedge ?

A. He did.

Q. What sort of a person was this John Barnes ; was he a short or tall man, and how tall does he suppose him to be ; was he of a swarthy or fair complexion, and was he a fat or a lean man ; and what countryman does he suppose him to be ?

A. He was as tall, or taller than him (the Deponent) ; of a swarthy complexion, a stout-made man. What countryman he was, he does not know.

Q. Where, and in what capacity or station, was he (the Deponent) in the month of September, 1780 ; and does he know where John Barnes was at that time ?

A. He (the Deponent) was then servant to Col. Thomas ; and John Barnes was at a village called Laurel Hill, on the road leading to Fort Knyphausen.

The DEPUTY JUDGE ADVOCATE begged leave to call to the recollection of the Court, that he had, on Friday the 23d instant, put two questions to the Witness Thomas Hobbs, relative to a certain John Barnes, whom he meant to have produced as a witness on this tryal; but which questions, together with the answers thereto, the Court then judged unnecessary to be inserted on their proceedings, as there was a probability that the said John Barnes could be produced. The said John Barnes, as is recorded, not being to be found, the Judge Advocate closed the prosecution on Tuesday: it now, however, appearing, in the course of Col. Gordon's examination of the Witness Thomas Hobbs, that the name of John Barnes is repeatedly introduced and mentioned, he (the Judge Advocate) appealed to the Court, whether his examination of Hobbs, relative to John Barnes, should not also appear upon record; and, on the Court being cleared, and having considered the matter, they were of opinion, that the said questions and answers should stand upon their proceedings; and they are here inserted accordingly, and are as follows, *viz.*

Q. At the time he saw Col. Gordon under the tree, as he has mentioned in the former part of his evidence, was any other person with him (the Deponent?)

A. There was; his name he cannot be certain of; he thinks his name was John Barnes; he was no soldier, but by trade a blacksmith, who was permitted by Col. Howard to go with the brigade of Guards, to shoe their horses.

Q. Has not he (the Deponent) been directed, by the Judge Advocate, to take every pains to

had out this person; and what has been the success of the pursuit?

A. He made all the enquiry he could after this person, but could not find him.

Q. (from the Court.) Can he ascertain the time of day he saw Col. Gordon?

A. After ten o'clock in the morning.

Q. Has he not been constantly Col. Thomas's servant, since the 23d of June, 1780?

A. Yes.

Q. How long is it since he first imparted to Col. Thomas, or the Judge Advocate, that he had seen Col. Gordon on that day?

A. About two days before this present Court sat.

Q. To which did he first impart it; to Col. Thomas, his master, or the Judge Advocate?

A. To the Judge Advocate.

Q. Was he induced to impart this circumstance to either the one, or the other, by either threats or promises; or did he do it voluntarily, and of his own accord?

A. Of his own accord.

Q. Did he ever, previous to the time he mentioned imparting this circumstance to the Judge Advocate, impart it to any other person?

A. He never mentioned it to any one, but Serjeant Fursbrook, and he mentioned it to him on the same day he mentioned it to the Judge Advocate.

Q. As so long a time had elapsed from the circumstance having happened, without his ever mentioning it, what particularly induced him to do it at that time?

A. He tried to find this Barnes; and, not being

ing able to find him, he applied to the Judge Advocate, to know whether his evidence would be taken : as being servant to Col. Thomas, he was doubtful whether his evidence would be taken.

Q. Was he, previous to this time, desired by any one to look for Barnes, and by whom?

A. Before he informed the Judge Advocate of this circumstance, he looked for Barnes, several days, on his own accord ; and afterwards he looked after him by desire of the Judge Advocate.

Q. Did he know Col. Thomas was to be tried by a Court Martial, on the 15th of September, 1780, for aspersing Col. Gordon's character, by saying he had not done his duty before the Enemy, on the 23d of June, 1780?

A. He did.

Q. What was the reason he did not offer himself as an evidence for Col. Thomas, at that time ?

A. He had a fever and ague fifteen weeks ; and besides, what he had to say, he thought, was nothing concerning Col. Thomas.

Q. Where did he go to enquire for John Barnes ; and of what person or persons did he make enquiry for him ?

A. He went to that tavern in Water-street, (he does not know the persons' names) where he and John Barnes had formerly drunk the porter ; he also went to Brooklyn.

Q. Where was he at the time he was ill of the fever and ague ; in Town, or on Laurel Hill ?

A. At Laurel Hill.

Q. What

Q. What distance was the tree, under which he saw Col. Gordon, from the hedge?

A. He cannot tell the distance ; it was very near ; Col. Gordon stood betwixt the tree and the hedge.

Q. (from Col. Gordon.) Did Col. Gordon, when he stood between the tree and the hedge, front the place where the halt had been, or the heights to which the Guards were advancing ?

A. He fronted neither at that time ; his right was towards the heights.

Q. Did he front the road ?

A. He did not ; his back was towards the road.

Q. (from the Court.) Does he mean the road the Guards marched by, or the road the Hussars took ?

A. He means, his back was towards the road by which the brigade of Guards marched.

Q. Let him inform the Court, how long he and Barnes were together when he first saw him ; and whether Barnes was on horseback, or on foot ?

A. The time he first saw him was, when he was mending his canteens ; he continued with him till he passed the brook ; and he was on foot.

Q. (from Col. Gordon.) How many brooks did he pass, after repairing his trappings, before he saw Col. Howard ?

A. One.

The Court adjourned till to-morrow morning, ten o'clock.

Saturday,

Saturday, August 31, 1782.

THE Court being met, pursuant to adjournment,

SERJEANT RICHARD FURSBROOK, first regiment of Guards, was again examined.

Q. (by Col. Gordon.) At what distance was the brigade of Guards from the detachment in the orchard, under the command of Col. Thomas?

A. At the time the detachment was in the orchard, the brigade of Guards was distant about three hundred yards.

Q. Was the brigade of Guards at that time halted, or was it moving forward; and at what particular place was the brigade of Guards at that time?

A. The brigade of Guards was moving till the first company was ordered into the orchard; whether the brigade halted afterwards, he cannot say: the last part of the question he cannot answer.

Q. Was the halt near a bridge or brook; and was that bridge or brook in front or rear of the brigade; and at what distance was the brigade from the bridge?

A. There was neither bridge nor brook in sight of the orchard where the first company was detached; whether there was a bridge or brook in sight of the brigade, he cannot say.

Q. When, and how long was it, after the first
com-

company, under the command of Col. Thomas, rejoined the brigade; and did he (the Deponent) pass any bridge soon after he rejoined the brigade?

A. From the time they were detached, till they rejoined the column, was about half an hour; and about half an hour after they rejoined the column, they passed a bridge.

Q. Was there any cannonade, during the time he (the Deponent) was in the orchard, from the artillery attached to the brigade?

A. He did not hear any artillery play, during the time he was in the orchard.

Q. How long was it after the first company, detached under Col. Thomas, rejoined the brigade, before it reached the heights of Springfield; and what does he suppose was the distance from the place where the detachment rejoined its brigade, to those heights?

A. About an hour and a quarter; the distance might be near half a mile to the heights.

Q. Was there any halt made by the brigade, from the time the detachment rejoined the brigade, until they reached the heights of Springfield?

A. The column halted some few minutes before they came to the bridge, being fired upon by the Rebels on their right flank; and Col. Stewart came into the front, and gave the word *Forward*.

Q. At what distance was the bridge he mentions from the heights of Springfield?

A. About a quarter of a mile, more or less.

Q. Where was he in the month of September,

ber, 1780; and when, and where, and by whom, was he (the Deponent) made a Serjeant?

A. He cannot recollect, but he was with the brigade: he was made a Serjeant, the 18th of November, 1781, by Capt. Swanton, at Charles-Town, who then commanded the remains of the brigade.

Q. (*by the Court.*) When he was detached with Col. Thomas's company into the orchard, was there any heavy fire, either of artillery or musquetry, from the Rebels upon that detachment?

A. Very heavy musquetry; but he does not recollect hearing any artillery.

Q. Did the Rebels press upon that detachment, in consequence of the heavy fire of musquetry?

A. When the company first went down, the Rebels were distant about sixty or seventy yards from them, and they (the Rebels) did not advance any nearer during the time he was there.

Q. Was he at that time, or when, detached to Col. Gordon for orders?

A. Not at all.

Q. In consequence of the heavy fire of musquetry he mentions, were any of the detachment killed or wounded?

A. He does not recollect seeing any.

Q. Was the firing entirely from the enemy, or was it returned by the detachment?

A. There was a brisk firing on both sides.

Q. At what time did this firing commence, and cease?

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A. There

A. There was a new-raised corps in the orchard, who were first fired upon, and the company was detached to their support: after he went into the orchard, he fired eight rounds himself; and then Col. Thomas gave orders for the firing to cease; and soon after the enemy ceased firing also.

Q. Does he recollect at what particular period Serjeant-Major Jarman was sent by Col. Thomas in search of Col. Gordon, during the time of the firing, or after it ceased?

A. Just after Col. Thomas had given orders for the firing to cease, he ordered Serjeant-Major Jarman to search for Col. Gordon.

Q. Was he promoted as a Serjeant to the first company; and is he still in the same company?

A. He was made into the Light-infantry company, and not into the same he was formerly in.

Q. Did he (the Deponent), when they passed the bridge, about half an hour after rejoining the brigade, see Col. Gordon; or, in short, did he see Col. Gordon at any time between his rejoining the brigade, and the Guards taking possession of the heights of Springfield?

A. No.

Q. At the time he was made a Serjeant, was he the oldest Corporal on the spot?

A. Yes.

Captain SWANTON, already sworn, was again examined.

Q. (*by Col. Gordon.*) What space of time was the brigade of Guards halted; when Col. Thomas

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mas was detached with his company into an orchard, in support of Col. Barton?

A. He cannot tell; he did not know when Col. Thomas's company was detached.

Q. Was the brigade of Guards halted near any bridge in the neighbourhood of Vauxhall?

A. He cannot tell; nor does he even know where Vauxhall is.

Q. Did the brigade of Guards halt, at any time after they separated from the division of the army under the command of General Knyphausen, before they came to the heights of Springfield?

A. They halted some time, he cannot say how long, before they ascended the heights of Springfield: there were some shots fired from their own guns, and, he believes, some from the Hessian guns: the Hessian guns passed his company, which he did not leave, and their guns were moved forwarder than his company; they fired upon several bodies of foot, and some horse, which made their appearance.

Q. Was there any bridge near the place where the brigade halted during the cannonade; and, if any bridge, was it in the front or rear of the brigade, at the time of the halt?

A. In going up to the heights of Springfield, he remembers to have passed a bridge, but knows nothing further.

Q. What officer of artillery had the command of the guns attached to the brigade of Guards, on the 23d of June, 1780?

A. He understood, Mr. O'Hara.

Q. Where was Col. Schutz, when the brigade of Guards took possession of the heights of Springfield? Did he then see Col. Schutz; or how soon after did he see him?

A. He should suppose Col. Schutz was with the second battalion; he does not recollect to have seen him: as it was the only time a fire was on the two battalions, his attention was taken up in looking after his company in ascending the heights.

Q. Did the brigade of Guards, on their march from the place he says they halted at, to the heights of Springfield, move slowly or briskly on?

A. In consequence of some guns and other circumstances, they went on sometimes brisk, sometimes slower; he remembers, during the time they went up to the heights, there was a halt or two; from the length of time since intervened, he cannot answer with certainty.

Lieut. Col. JOSEPH BARTON, late of the New Jersey Volunteers, being duly sworn, was examined.

Q. (*by Col. Gordon.*) Was he with the army in New Jersey, under the command of General Knyphausen, on the 23d of June, 1780; and how was he with his corps employed that day?

A. He was with them that day, and employed in flanking the British army to the left.

Q. Which division of the army did he march with when they separated?

A. With General Matthew's.

Q. Is

Q. Is he well acquainted with the road leading to the heights of Springfield, by the route that the division under Gen. Matthew marched; and from the knowledge he has of that country, does he think the map, now produced before the Court for his inspection, a just representation of the roads in that route, and the heights adjacent?

A. He is very well acquainted with the road; and he thinks the map produced, nearly a just representation.

Q. Did the division of the army under General Matthew halt near, and how near to Vauxhall; and was there any bridge near that place where the division halted; and was that bridge in the front or rear of the division?

A. About a hundred and fifty yards, or thereabouts, on this side of Vauxhall, there was a bridge across a small river that runs down by Vauxhall; and the bridge was in the front.

Q. Was the corps under his command, at the time of the halt he mentions, in an orchard, engaged with the enemy?

A. During that halt, his corps was ordered into the orchard under the hill, and was engaged with the enemy the whole time they were in the orchard.

Q. Was there any cannonade at the time of the halt he mentions; and where were the cannon when they were fired, and how near to the bridge?

A. There was a cannonade, the greatest part of the time, from the King's army; the cannon were where they first halted, about a hundred

dred and fifty yards on this side of the bridge ; after he (the Deponent) was ordered into the orchard, he believes the cannon moved on.

Q. Does he remember to have seen Col. Gordon with his command on the 23d of June, 1780, before the halt at Vauxhall ?

A. He saw him several times ; he recollects, in particular, he saw him at the parting of the roads, sitting on a fence, when a cannon-ball from the enemy came very near him : there was an officer of the Guards who told him he had better take the flowers out of his hat, for he (the Officer) thought the Rebels aimed at him : there were two men of the Queen's Rangers killed at that parting of the roads where Col. Gordon was sitting on the fence.

Q. Does he remember to have seen Col. Gordon, at the time of the halt at Vauxhall ; and where did he then see him ? Was he (Col. Gordon) with or near the guns ; and was it before or after the time his corps was engaged in the orchard ?

A. He saw him with the guns ; 'twas just at the time his corps was engaged ; he saw him at the guns as he (the Deponent) was going down to the orchard : he (the Deponent) ordered Capt. Croul to march as fast as he could through a field, to shelter himself from the balls, which were flying pretty thick.

Q. In what situation was he with his corps, with respect to the brigade of Guards, from the time of their leaving Vauxhall, and marching to the heights of Springfield ?

A. The rear of his battalion was constantly flanking the left of the Guards.

Q. Did

Q. Did he see Col. Gordon from the time of his leaving Vauxhall, during the march towards the heights of Springfield, in the column of the Guards ; and how often did he see him ; and how far was it he so saw him from the heights of Springfield, when the Guards first took post ?

A. He is not positive that he saw Col. Gordon more than once ; he thinks the distance was about six hundred yards from the heights : That he (the Deponent) had received a wound, and he was stooping to look at his leg ; Col. Gordon spoke to him, saying " he hoped he " was not hurt :" That he marched with his battalion, and he (the Deponent) does not recollect seeing him afterwards.

Q. At what distance did he march from the left of the road leading from Vauxhall towards the bridge near the heights of Springfield, where the Guards took post ?

A. At about seventy or eighty yards distant, according as the ground admitted of, so that he could keep sight of the brigade.

Q. Were there any wheat-fields on the left side of the road, or near it, in the route of his march from Vauxhall towards the heights of Springfield, where the Guards were first posted ?

A. He does not recollect seeing any ; the ground was mostly woody.

Q. From his knowledge of that road, and from his observations on the 23d of June, 1780, will he inform the Court, whether there are any hedges on or near the left side of the road leading from Vauxhall, near the orchard where his

his corps was engaged, to the heights of Springfield, where the Guards took post?

A. He knows of none; he has rid the road very often: there was a stone fence, with a rail on the top, and every here and there a bush grew; and that fence was broke down at several places that day.

Q. Was there any firing during the march from Vauxhall to the heights of Springfield; and from whence did it proceed; and at what distance from the brigade of Guards?

A. After they marched out of the orchard, the Rebels retreated to a hill, and kept up a constant firing at a great distance (from half a mile to three quarters) from that place, and from a wood that was off on the right.

Q. Will he shew the hill they fired from, on the map produced for his inspection?

A. The firing was from a hill, on which was a beacon, and a scattering wood which run off from that hill; and there was no firing nearer than half a mile: he does not know the name the hill went by; there is a whole row of mountains, which in general are called Newark-bills.

Q. As he says that he saw Col. Gordon several times on the 23d of June, 1780, did Col. Gordon, when he saw him, appear cool and composed; and what was his opinion of his (Col. Gordon's) conduct as an officer on that day?

A. He saw nothing of him but what appeared as an officer doing his duty; he did not particularly notice him, as he had his own corps

corps to attend to ; he saw no officer that day, that he knows of, that did not do his duty.

The Court adjourned till Monday morning, ten o'clock.

Monday, Sept. 2, 1782.

THE Court being met, pursuant to adjournment,

LIEUT. Col. BARTON was cross-examined.

Q. (*by the Court.*) Can he take upon himself to say, that the map now produced in Court, is exact, both with respect to the face of the country, and the distances there laid down ?

A. He cannot say it is an exact survey ; but it appears to him to be (as near as he recollects) a rough sketch, and nearly representing the face of the country.

Q. Does he recollect a party of the Guards coming, to the support of his corps, into the orchard ?

A. He saw some British troops, some of which were Light Infantry, which, he thinks, were a party from the Guards.

Q. Did he see, or know, of the Guards having taken possession of the heights of Springfield, that day ?

A. He saw some British troops take possession
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says 1000
of the heights, but he was not there himself ; he believes the Guards were amongst them.

Q. Can he ascertain the time of day he saw Col. Gordon about six hundred yards from the heights of Springfield ?

A. He cannot ascertain the time ; what he means by the heights, was not the summit of the hill, but where the troops first took post ; he thinks the time was the fore part of the day.

Q. Was it between the time the British troops came into the orchard, to his support, and that of his seeing British troops on the heights ?

A. After he quitted the orchard, and before he saw the troops on the heights.

Q. Was it in the road by which the brigade of Guards marched, that he saw Col. Gordon, where he (the Deponent) was examining his wound ?

A. He imagined they marched in the road ; when he came up, he saw Col. Gordon and the brigade of Guards marching ; he supposes, towards the rear, as his battalion flanked the rear.

Q. As he has said he saw Col. Gordon, several times that day, with his command, what did he look upon to be his (Col. Gordon's) command ?

A. By seeing Col. Gordon with the Guards, he looked upon him as being with his command. Col. Gordon being the only officer of the Guards he at that time was acquainted with, he could not see him without taking notice of him.

Q. With which of the battalions of Guards did he see Col. Gordon, and with what part of that battalion ?

A. He did not know there was more than one battalion of Guards ; he thought the whole to consist of one battalion.

Q. What

Q. What was the distance from the orchard, where his (the Deponent's) battalion was engaged, to the heights of Springfield?

A. About three quarters of a mile.

Q. Are there not defences against cattle, in the New Jerseys, which are composed of stone fences, with a rail or two above them, and of brush, which, having grown up, is lopped down, and interwoven with this rail or rails?

A. There are such fences: when the rails grow rotten, and the stones fall down, the brush is lopped among them.

Q. Were there any such fences, or hedges, on the road leading from Vauxhall to Springfield?

A. There was a stone fence, with a post or rail on it when first made; but when he saw it on that day, it was broke down in many places: there was some brush growing here and there; there was one continual fence; but he cannot say it was all the way exactly the same.

Q. Can he ascertain the height of that fence in general?

A. As it appeared to him, the height was generally between three and four feet.

Q. Was the height, in general, sufficient to shelter a man of common size from receiving a wound, standing up?

A. A man might shelter himself, if he took the advantage of a post; but, standing up, he could shelter himself no further than the height of the fence.

Q. As he has said the fence is composed of stone and rail, what is the height of the stone work?

A. Commonly about two feet of stone.

Major THOMAS MILLEGE, of the first battalion of the New Jersey Volunteers, being duly sworn, was examined.

Q. (by Col. Gordon.) How long has he resided in the province of New Jersey, and in what part of it?

A. About eight and thirty years, and chiefly, and almost always, in Morris County.

Q. Is he well acquainted with the country in the neighbourhood of Springfield; and whence did he derive his knowledge of that country?

A. He is very well acquainted with the country in the neighbourhood of Springfield, and derived his knowledge of it from frequently surveying lands, and travelling the roads thereabouts.

Q. He will be pleased to look at the map, now shewn him, and answer, did he draw it? and is it a just representation of the roads and country between Vauxhall and the town of Springfield?

A. He drew the map, and he thinks the general form of the country is well represented; but there may be many curves in the road, not delineated in it, as he drew only according to the best of his recollection.

Q. What is the distance from the bridge near Vauxhall, to the first heights beyond the bridge, over the Rawany River?

A. He should think that it is barely a mile; rather above three quarters and a half quarter.

Q. What is the distance from the said bridge over Rawany River, to those heights?

A. About one hundred and fifty yards.

Q. What kind of a fence is there along the road, from Vauxhall to the bridge, near the heights of Springfield?

A. From

A. From Vauxhall, along the road for some distance, there is a stone fence, and about two rails high above the stone ; he cannot say whether it is one, or two rails : the rest of the fence is a wood fence ; whether it is post and rail, or rails lying together, he cannot recollect ; the knowledge he is speaking from, is of six years standing.

Q. From his knowledge of the road leading from Vauxhall to those heights, as he says he is well acquainted with it, is there any hedge in any part of that distance ; or is there, in particular, near, or within three hundred yards of the bridge near the heights of Springfield, any fence that has the least appearance of a hedge ?

A. Not that he knows of.

Lieut. GEORGE SPENCER, of the Queen's Rangers, being duly sworn, was examined.

Q. (*by Col. Gordon.*) Was he with the army under Gen. Knyphausen, on the 23d of June, 1780 ; and in what corps was he ?

A. He was with the army on that day, and in the Cavalry of the Queen's Rangers.

Q. Does he remember seeing Col. Gordon, at the time the army halted near the parting of the roads ; and did he observe any thing particular respecting Col. Gordon's conduct ?

A. At the parting of the roads, or a little beyond, the Cavalry of the Queen's Rangers followed the Infantry of that corps. There was a little skirmish in front ; their Cavalry, with the 17th Dragoons, that followed them, were ordered to the right of the road, and the Guards closed up to the Rangers : he then saw Col. Gordon

don go up to some of the officers of the Rangers; he had flowers in his hat, which made him remarkable; and he spoke to the officers. About that time, a piece of cannon, he believes a six-pounder, went in front of the Rangers: the Rebels had one piece of cannon, and seemed to direct the first shot, in a hollow way, in front of the Rangers: they (the Rebels) altered their line of fire, and a shot came near where Col. Gordon, and the officers of the Rangers, were standing; another shot was fired near, which killed two men, a little behind Col. Gordon. Some conversation passed between him (Col. Gordon) and the officers of the Rangers; but he (the Deponent) was not near enough to hear it. Col. Gordon appeared undisturbed and cool. The Cavalry was then ordered to mount, and got into a line of march.

Q. Did he march with the division of the army under Gen. Matthew, on that day, from the time that the army separated; and did that division halt at Vauxhall, near any bridge; and did he see Col. Gordon at that time with the Guards, or where did he see him? Is the map, now produced in Court for his inspection, a just representation of the position of the army, at the time of the halt, to the best of his recollection?

A. He marched with the division of the army under Gen. Matthew, from the time of their separating, till the army halted at Vauxhall, on this side of the bridge: he saw Col. Gordon at the guns repeatedly; which guns, he believes, were under the direction of Mr. O'Hara. He never was on the road, but at that particular time. The map seems to him pretty correct, but he is not a judge.

Q. Was

Q. Was there any cannonade from the British Artillery, at the time of the halt ; and how long does he think it continued ; and did the troops begin to move soon after the cannonade ceased ?

A. There was : the cannonade continued, he believes, a full half hour ; and the troops moved immediately after the cannonade ceased.

Q. How was the Troop of Horse belonging to the Queen's Rangers dressed that day ; and had they caps on, and what colour were those caps ? Was there, to his recollection, any other Cavalry with the division of the army under Gen. Matthew ; and does he recollect how the Cavalry belonging to the Jagers were dressed that day ?

A. The Troop of Horse belonging to the Queen's Rangers, were dressed in short green coats, and high black caps. As he (the Depo-
nent) was in the front of the first division of Cavalry, and the line of march entirely altered, he does not recollect seeing any other Cavalry. The Cavalry belonging to the Jagers were certainly dressed in long green coats, and cocked hats.

Q. Does he recollect to have seen Col. Gordon after the army marched from Vauxhall ; and where did he see him ?

A. He did see Col. Gordon after the army left Vauxhall. After the cannonading ceased, the column began to move, and a party of Hessians followed the Guards. Col. Simcoe, who had gone off to the left, towards Springfield, sent for his Cavalry : the Cavalry filed off from the right, passed the Hessian regiment, crossed the bridge, and came up to the fourth, fifth, or sixth division

division of the Guards. He then saw Col. Gordon, in the line of march, with the Guards: they marched very fast, and about three hundred yards beyond the bridge, *that* was the last time he saw Col. Gordon, as they (the Cavalry) took to the left, went through a field, and came into the road again near Springfield, where the Rangers then were.

Q. Did he see any ground of wheat, soon after they turned to the left, or any where near the left side of the road leading from Vauxhall to Springfield?

A. He did not.

Q. As he says he saw Col. Gordon, at several times, during the 23d of June, 1780, what was his opinion of his behaviour; and does he think he acquitted himself as a zealous and active officer?

A. As far as he saw Col. Gordon, his countenance was good, and his behaviour appeared very zealous, and such as would not have disgraced any officer.

Q. (*from the Court.*) At the time he saw Col. Gordon last, when the Guards were moving rapidly on, was there any firing, and what kind of firing?

A. There was a firing half a mile to the right of the road, very broken, and, he believes, very ineffectual.

Q. What distance was it, from the place where he saw Col. Gordon last, to the heights of Springfield?

A. About half a mile.

Q. At the time he says he saw Col. Gordon within half a mile of the heights of Springfield, can

can he say which battalion of the Guards he was with, and with what part of that battalion?

A. With the fourth or fifth division from the rear : they were running on very fast, and much broke.

Q. Where was the firing on the Guards?

A. From a hill, about half a mile to the right, on which was a beacon.

Q. Can he ascertain the time of day, or nearly, when he saw Col. Gordon?

A. He cannot ascertain the time ; he cannot guess within an hour or two ; it was in the forenoon.

Q. At the time the shot came from the Enemy, when the two men were killed, when, he says, Col. Gordon appeared cool and undisturbed, was there any musquetry ?

A. Not that very moment, he believes ; if any, it was very little, and very distant.

Q. Does he know of a troop of Huzzars, under the command of Capt. Diemar, and how they were dressed ?

A. They were dressed in blue, with tall black caps ; but he did not see them on that day ; and no part of the Cavalry with Gen. Matthew's brigade had white in their caps.

Lieut. CORNELIUS BLANCHARD, commanding the Armed Boat's company, being duly sworn, was examined.

Q. (by Col. Gordon.) Was he with the army under the command of Gen. Knyphausen, on the 23d of June, 1780 ; and in what character, or capacity ; and did he march with the division of the army under Gen. Matthew, when they separated ?

Q.

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A. He was with Gen. Knyphausen on that day, in the character of director of guides; and when the army separated, he marched with Gen. Matthew's division.

Q. Was he sent by Gen. Matthew, at any time, and when, to Col. Simcoe, with orders; and what happened thereon? Did he return to Gen. Matthew; and did Col. Howard then go with him to Col. Simcoe?

A. Col. Simcoe having gone out of his route, Gen. Matthew ordered him to go to him, and put him right: he (Col. Simcoe) could not take any orders from him (the Deponent), and desired he would go back and acquaint Gen. Matthew. Col. Howard then offered his service to go to Col. Simcoe; and he (the Deponent) went with him, and Col. Simcoe then moved on to Camels Bridge. The place he was sent from was a little bridge, about two hundred yards beyond Rawanny's Bridge.

Q. At what distance from the bridge, where the division of the army had halted near Vauxhall, did Col. Howard leave the brigade of Guards with him; and were the Guards then advancing on the road from Vauxhall towards the heights of Springfield?

A. Gen. Matthew was about two hundred yards from the bridge, when he (the Deponent) left him with Col. Howard: he cannot say the army halted at all; they were moving when he left them, and were moving when he came up with them.

The Court adjourned till to-morrow, nine o'clock.

Tuesday,

Tuesday, Sept. 3, 1782.

THE Court being met, pursuant to adjournment,

MR. CORNELIUS BLANCHARD was cross-examined.

Q. (*by the Court.*) From what part of the brigade of Guards did Col. Howard set out, to go to Col. Simcoe?

A. He cannot recollect very well; but he thinks that Gen. Matthew was at the head of the brigade at the time he left him.

Q. At the time he (*the Witness*) set off with Col. Howard, to go to Col. Simcoe, did he see Col. Gordon?

A. He cannot recollect that he did.

Q. Can he ascertain the time of day?

A. He should suppose it to be about ten o'clock in the morning.

Q. Did he return to the brigade of Guards with Col. Howard, or see him return?

A. Neither.

Q. Did he see a detachment of the Guards sent into an orchard to support Col. Barton's corps?

A. He thinks that he heard Gen. Matthew order the Light Company there; but he does not recollect seeing any other.

Q. What distance was Col. Simcoe's corps from the brigade of Guards, at the time he and

Col. Howard were sent thither?

A. He should suppose, about three hundred yards.

Col. GORDON then addressed the Court as follows:

" Mr. PRESIDENT, and GENTLEMEN of the
" COURT,

" I Have already brought forward several
Witnesses, who were now here, and whose
attendance could therefore be obtained,—with
a view to vindicate my reputation from the pre-
sent charge.

" There is one Gentleman, whose evidence
would have been very material in my favour,
and whom I should have examined next; but
he is now in England.—This is Capt. James
Murray, of the Queen's Rangers: however,
he has made a deposition, which I am ready to
lay before the Court, and hope they will read,
and receive it, as a part of their proceedings.

" If it is reasonable that the testimony of
dead and absent Witnesses should be admitted
against me, it is equally reasonable that it should
be admitted *in my favour*.—Such must be the
spirit, whatever may be the *letter*, of the King's
instruction on this occasion.

" As an accused person, I have at least a
right to every indulgence, with respect to evi-
dence, that a prosecutor can exert.

" I know of but one objection that can pos-
sibly be made to this measure, and I am will-
ing to anticipate it.—It may be said, that the
Prosecutor had no opportunity to examine and
question

question the Witness.—But, as this prosecution is carried on by the Deputy Judge-Advocate for the Crown, so I must observe that the deposition was taken in the presence of Mr. Porter, his assistant, who might have asked any questions which he thought proper, and had the answers inserted in the deposition ; and the deposition itself was laid before a Board of General Officers, and Mr. Adye has authenticated the copy.”

The Court, having taken Col. Gordon’s request into consideration, consented thereto; and the affidavit of Capt. Murray was accordingly inserted, and is as follows :

“ WHEN the British army under Gen. Knyphausen halted that morning (23d of June, 1780) on the road, I believe they might then have been about a mile from the village of Springfield. the Rebels at this time seemed to be collecting, in some force, at a house, which might be about three hundred yards distance, and began to cannonade us with one or two pieces of cannon : the Queen’s Rangers were then in front ; the brigade of Guards, or part of them, directly in our rear.

“ Col. Gordon (whom I only knew by sight) came up to where I was standing, and requested the loan of a spy-glass I held in my hand. I gave him the glass, and accompanied him into an orchard on the left of the road. Whilst leaning there against a fence, observing the Rebels, a cannon-ball from them struck the fence, directly by his side : although he had

so narrow an escape, he did not seem in any manner alarmed. He afterwards observed to me, *very coolly*, that our remaining there, might be of bad consequence to some of the troops in our rear; and therefore proposed returning into the road. I acquiesced with his opinion; and just as we got there, another cannon-ball from the Enemy killed two of the Queen's Rangers beside us. On both those occasions, Col. Gordon appeared to me as undaunted, and unconcerned, as the bravest officer in the army could possibly have been!—Our regiment being then ordered to incline to the right, into a field where they were better covered from the sight of the Enemy, I did not see Col. Gordon, for perhaps an hour; when the column we were in, commanded (I believe) by General Matthew, after having advanced some distance farther, again made a halt, opposite to the heights in the rear of Springfield.

“ The Rebels here seemed pretty numerous, and to be making a disposition to prevent our getting possession of those heights. Two guns from us began to play on them: and, having the curiosity to see what effect this cannonade was like to have, I found Col. Gordon *there*, *very active* in directing their fire, wherever there seemed most occasion! —

“ I do not recollect to have taken particular notice of Col. Gordon after this; but the general tenor of his behaviour that day, when I happened to be witness of it, inclined me to consider him as a *zealous brave officer*, and being almost the *only* officer of his corps whom I observed

observed attending to what was transacting
in front of the column! —

JAMES MURRAY,
Capt. Queen's Rangers.

*The above sworn to, in the presence of Lieut.
Richard Porter, Assistant Deputy Judge-Ad-
vocate, to be read as evidence on the tryal of
Col. Cosmo Gordon.*

New York, 7th December, 1781.

MATTHEWS,
Mayor of the City of New York.

Col. GORDON then closed his Defence with
the following Address to the Court:

" Mr. PRESIDENT, and GENTLEMEN of the
" COURT,

" I Should do violence to my own feelings, if
I did not gratefully acknowledge the *candour* and *attention* with which you have heard
this cause. Impelled by a principle, which must
ever be predominant in the minds of Gentlemen,
(I mean a just regard to injured reputation) I
have thought it necessary, as the charge brought
against me was general, to investigate the whole
of my conduct on the 23d of June, 1780. I had
many other Witnesses to bring before you, who
would more fully have elucidated the several
points which those examined have attested to:
but

but, as your enquiry has already been protracted much longer than I could have wished, and, from the public orders of yesterday, there is a prospect that you will immediately be obliged to separate, for the necessary service of your King and Country; as well as from a consciousness that the evidence I have already produced must have removed from your minds any impression, made by the testimony in support of the prosecution, unfavourable to my reputation and character as an officer; I shall now close my defence with a few general observations on the evidence before you, which I trust will place not only my *conduct*, but the *accusation* brought against me, in its proper colours.

"I cannot, Gentlemen, at this period of my cause, admit of a doubt but that my general behaviour before the enemy, on the day to which the charge refers, has appeared to have been that of an officer *attentive* to *his* duty, and zealous for the *public service*.—Even the Judge-Advocate himself did not pretend to censure the whole tenor of my conduct on the day alluded to, but seemed to wish that all enquiries might be suppressed, except those that were confined to a short part of that day, for which (possibly) I might not be able so particularly to account. Candidly will I suppose that the gentleman thought he was right; but the discernment of this Court led them to a *contrary opinion*.—They saw the impossibility that a man who in the same day, but a short time *before*, and a short time *after* a particular period, betrayed no improper emotions at *real danger*, should be terrified from his duty where no danger

danger appeared, or the appearances were infinitely less alarming.—The inference is certainly just: for, however the human heart may be imagined to vary and become inconsistent with itself at *remote periods*, yet the paroxysms of bravery and cowardice can never be supposed to succeed each other with so much rapidity in the mind of a gentleman: and this remark carries with it so much intrinsic weight, that it throws an air of *improbability* upon the *whole accusation*, even if it does not amount to a full refutation of it.

" With your permission, however, I will make a few remarks upon the several articles which have been produced to shew that I did not do my duty on the 23d of June, 1780, with only this previous observation, which I submit to your judgment as experienced officers; how difficult it must be for an officer, even the most strictly attentive to his duty, to be able to prove by witnesses (who must be supposed to be attentive to their own duty) his *exact situation* in every part of the march of a whole day, especially at so remote a period of time. I will therefore state what my accuser has suggested, as well from a former as in the present tryal, to my prosecutor, as the grounds for the present charge.

" The first commences from the time of his being separated with his company from the brigade of Guards, and detached into the orchard at Vauxhall in support of Col. Barton. At this time, he alledges, that he sent to me twice for orders, and that his messengers were

unable to find me; from whence he infers, that I was absent from my command, and guilty of misbehaviour.

"I would here beg leave to observe, that the circumstance of Col. Thomas's sending repeated messages, whilst he was in the orchard, one directly after the other, to me, for orders, without waiting for the return of one messenger before he dispatched another, though he was then exposed to *no fire*, and when I had neither posted him in the orchard myself, nor was the commanding officer of the brigade who *had* posted him, (at that time absent) seems to imply a settled pre-determination to find something in my conduct, which might be a subject for future censure:—and this observation appears to be strengthened, by his saying that he looked for me *himself*, in the two battalions of the Guards, before the brigade began to move forward; and his sending soon after that time, without any apparent necessity, two persons upon the same errand, who sought for me only in the first battalion, though Col. Howard was then absent, as appears by the testimony of Mr. Blanchard, and consequently the command of the whole brigade devolved on me. But I submit whether this ground of charge is not entirely removed, by remarking, that it appears clearly, from Col. Barton's and Mr. Spencer's testimony, and is even allowed by Mr. O'Hara himself, that I was in advance with the guns attached to the brigade of Guards, during the cannonade which took place upon the halt of the army near Vauxhall, and continued during the whole halt; and that the brigade of Guards were not

at that time exposed to any fire from the enemy. From this circumstance, I presume, it may be clearly inferred, that, during this halt, I was in the way of my duty, and almost in the only place where repose was not to be found, and where service could be performed.

" This, I presume, will fully account for my not being found by Mr. Thomas's messengers, whom he dispatched from the orchard, even if I should allow that I was really sought for; and the same answer may be sufficient with regard to the researches which Mr. Thomas alledges that he himself made: for it is fully *in proof*, that the march commenced as soon as the cannonade was ended; at which very time I rejoined the brigade with the artillery attached to it. Why I was not found by Mr. Adjutant Wilson and Serjeant-Major Jarman, who were sent to me for orders by Col. Thomas, whilst the brigade was on the march from Vauxhall to the heights of Springfield, has already been intimated.

" Col. Howard left the brigade at the distance of about two hundred yards from Vauxhall, the place of our halt; as appears by Mr. Blanchard's evidence; I was therefore invested with the command of the whole brigade, during his absence: I had fallen naturally towards the rear of the brigade in receiving my orders from Gen. Matthew, as the brigade was then moving briskly on; and Mr. Thomas's messengers themselves say, that they only looked for me in the first battalion. Had they sought for me through the brigade, it is evident, from all proofs, that I should have been found; for both Col. Love-

Jace and Adjutant Colquhoun declare, that I was in that part of the column ; and Mr. Spencer and Col. Barton saw me with the column, after Col. Howard left it, and at different periods, in our approach towards the heights of Springfield.

" Having thus obviated this first part of the charge against me, I beg leave to take your attention to the second article, which comprises that extraordinary circumstance of my being seen by Col. Thomas's servant, one hundred yards from the high road, in a wheat-field, between a hedge and a tree. I shall forbear to make any observations upon the manner in which this person has *now* come forward :—it would be an insult to the understandings of this Court, to detain them with a minute examination of the evidence given by *such a man*; as it appears, even from his own testimony, that he is *now* a *most willing Witness*; that he was Col. Thomas's servant in the year 1780, and apprised of his tryal; and that he then neither pretended to know what he has now asserted, nor made any discoveries respecting his companion John Barnes, who, *at that time*, by *his own account*, was with him at Laurel-Hill, and in the power of Col. Thomas, who might have produced him.—And it is clear, from the former tryal, that he racked his invention for evidence to criminate *me*, in justification of *bimself*. I submit, therefore, to the Court, whether this idle, and apparently fabricated tale, deserves any notice; contradicted as it is, in all its most material circumstances, by Col. Barton and Mr. Spencer, gentlemen of honour

honour and reputation, who both, as well as Col. Lovelace and Mr. Colquhoun, saw me marching in the brigade of Guards, in a situation, both as to time and place, which rendered it impossible for me to be behind such a hedge, even if *it had existed*; and who both have clearly proved to the Court, that no ground of wheat, nor hedge, existed in the place, where he has fixed them. Besides, it clearly appears, even from the testimony of this *wretched being*, that in the situation in which he has thought fit to place me, with my back towards the road by which the brigade of Guards marched, my left side against a tree, and my right to a hedge, I should have been more exposed, though perhaps at a greater distance from the fire of the enemy, than if I had remained in the column marching with the brigade to which I belonged. But I dismiss this contemptible being, with all his train of falsehoods and absurdity, and proceed to the third charge, which I mention with regret, as it obliges me to discuss the evidence of a person *now no more*. Willingly would I draw a veil over even the *aberrations* of the dead, and reconcile his testimony with truth, if there was any possibility to suppose that *his only* mistake was with regard to the person whom he has declared that he saw. But a regard to my reputation, which has already suffered too long, obliges me to observe, that the part of the charge against me, which depends upon Mr. O'Hara's testimony, has been fully refuted by the testimony both of Col. Barton and Major Millidge; the latter of whom positively swears, that not the *least* appearance

pearance of a hedge is to be found where Mr. O'Hara has been pleased to fancy one. I need not observe, therefore, how difficult it would have been for Mr. O'Hara, advanced seventy yards in the front of the place he mentions, to know a person in *such* a posture as, by his *own description*, must have precluded every possibility of observing the countenance, or even distinguishing the stature, and thereby fixing the identity of the man he saw; and that, if such a remarkable circumstance had existed, as he mentioned, it is hardly possible to suppose that not one person of the brigade of Guards, who all passed the very spot where he fixed me, would have observed it, and mentioned his observation. I might have made many other remarks with respect to this article of charge, and the manner in which Mr. O'Hara delivered his testimony; as well as the advanced situation which he has assigned me, with respect to the column, in contradiction to all the other witnesses: but I *restrain*, and wish not to wound the memory of the *dead*, farther than is necessary for my own justification.

" Thus, Gentlemen, have I carried on my defence till my arrival at the heights of Springfield; and here the last ground of charge against me, with respect to that day's conduct, presents itself. It is alledged, that I did not ascend the heights with the brigade of Guards, then under my command. The whole evidence against me, with respect to this point, is merely negative. The Witnesses say, that they did not see me at the time of ascending the heights of Springfield, nor till a few minutes after. But (as Capt. Swanton very justly

Justly observed in his examination on the 31st of August) officers, upon such occasions, are too much engaged with their own particular duty, to attend to the situation of others. I however submit it, Gentlemen, to your own judgment, whether it would not take five minutes, from the time that the first company of Guards ascended those heights and formed upon them, till the last company reached their position; especially as they are proved to have marched in a very irregular and scattered manner: and some time might naturally elapse after that, before a person in the rear would be seen by one in the front division of the brigade. But Capt. Maitland, who commanded the second company of the first battalion, has declared in his testimony before this Court, that he saw me upon those heights, and heard a conversation I had with Col. Thomas, not more than five minutes after the brigade ascended them. Col. Stewart and Col. Lovelace say, my arrival was very soon after they got upon the heights; and, in justice to Captain Maitland's candour, I must observe, that he has expressly declared, that he will not take upon himself to say, that I was not with the second battalion of Guards when it took possession of the heights.

"The truth is, that I ascended those heights with the rear of the brigade; that the companies formed as they came upon the ground; and that upon my arrival, finding the men much fatigued with the heat of the weather, I gave an order for them to rest themselves. Col. Stewart, therefore, and even Col. Thomas, might have seen me ascending those heights after the first battalion was formed upon them; but they certainly saw

saw me with the rear of the brigade : and let me here observe, that there was no firing upon the brigade in the act of ascending, except a few scattering shot in the rear, where I then was.

" But what will evidently demonstrate the futility of making this charge against me, is, that the very same evidence might be turned against Col. Schutz, the next in command to me ; as this Court must recollect that Capt. Swanton, an officer of the second battalion, now produced by the prosecutor as a witness, declares that he does not recollect having seen Col. Schutz *at all* upon those heights ; and the other witnesses were not examined as to that point.

" I have now, Gentlemen, gone through the several articles of charge against me ; and though I have not answered them *so fully* and *particularly* as I could have wished, yet I trust that my answers are satisfactory and conclusive, and contain in them every remark that is essential to my defence. Your candour will naturally induce you to make allowance for any deficiency, both of style and matter, arising from the hasty manner in which I have been obliged to compose this summary.—*Upon the whole*, it must be evident, that the present accusation originally flowed, not from public spirit and a regard to justice, but from the bitter fountain of rancour and private animosity.

" It must also be evident, that, instead of being supported (as such an accusation ought to be) by unexceptionable testimony and clear demonstration, it has only been attempted to be propped by evidence, which, when canvassed, would not bear the light of day. The magic powers

powers of invention have been exerted to raise *hedges where they never grew, and exhibit wheat fields that never had an existence.*

On my part, Gentlemen, I have clearly shewn, that every objection to my conduct on the 23d of June, 1780, was either weak and untenable in itself, or totally destitute of any credibility; and that my whole behaviour on that day, was such as became an Officer and a Man of Honour.

From your justice, therefore, I cannot doubt but my injured reputation will receive a proper atonement; and I now again repeat what I formerly mentioned, that I repose, with the utmost confidence, my life and honour upon your discernment and your integrity.

The Deputy JUDGE ADVOCATE informed the Court, that he thought it his duty to lay some few observations on the evidence before them; but not being quite ready, begged the indulgence of the Court till the ensuing day; and the Court accordingly adjourned 'till next morning at nine o'clock.

Wednesday, Sept. 4, 1782.

The Court being met, pursuant to Adjournment, the Deputy JUDGE ADVOCATE submitted to the Court the following observations.

" GENTLEMEN,

" WHEN I closed the prosecution, I did it with a reservation of right to call Witnesses to controvert any new matter that might be produced by the Prisoner in the course of his defence, as also that of making such observations on the evidence in general, as might seem to me necessary.—As all neglects or omissions of duty, by Officers or Soldiers, are offences against the King, and the State in general, this is a duty I owe as well to my Country as to my Sovereign, whose cause I am now defending, and to whose royal consideration the proceedings of this Court are to be submitted.

" Col. Gordon, with a privilege that every Prisoner, brought before a Court of Justice in a land of liberty, ought to have, has thoroughly canvassed the evidence given, and turned their testimonies, as far as he could, to his own advantage.—I question not, nay, most readily acquiesce in, the justness of the idea, that where the scales are equiponderant on any occasion, the casting weight, though ever so light, should be thrown into that of the Prisoner; but at the same time, Gentlemen, that your hearts are open

open to indulge that heavenly attribute, *bumanity*, which naturally actuates mankind to feel for those labouring under misfortune, distress, or any apparency thereof, I am perfectly convinced that you will let justice float uppermost.—Fully fraught with this idea it is, that I make my appeal to you.

“ I have already acknowledged the propriety of Col. Gordon’s canvassing the evidence, and turning their testimony, as far as he could, to his own advantage: but Col. Gordon has gone further—he has, in a declamation of his own, endeavoured to persuade the Court, that some of the Witnesses on the part of the Crown have perjured themselves, and that others (although without the most distant appearance of support, but merely on his own *ipse dixit*) have not been actuated by public spirit and a regard to justice, but influenced by a copious draught from the bitter fountain of rancour and private animosity.

“ Should I, whilst acting in the capacity I do, (the Prosecutor for the Crown) sit silently down, and thereby tacitly acknowledge the justnes of the Prisoner’s remarks, the censure that would justly await me, I shudder to reflect on.

“ Col. Gordon stands before you a Prisoner, charged with a crime, that in the eyes of military men in particular, who well know the fatal consequences of neglects or omissions of duty, in even those of inferior ranks in an army, may be deemed capital.—I rise up *officially*, as his accuser:—his life and honour, as he expresses it himself, are reposed upon the candour, integrity, and discernment of the Court. The part I take on this occasion, or rather the propriety with

which I execute it, may not so immediately come under your decision : but at the same time, it will be highly flattering to me, to receive even a tacit acknowledgement, from so respectable a Court, of my not having swerved from my line of duty, or departed from that candour and impartiality, so requisite to a Judge Advocate, who has manifold duties to execute.

" The indulgences I have already experienced from the Court, encourage me to hope, that, whilst I continue thus to proceed, I shall rather meet with support than interruption ; and I will endeavour to repay them for their kindness and patience, by going as little as possible into collateral matter.—In carrying on this prosecution I have called upon only two auxiliaries : Truth is my spear, and Honour my shield ; the former is my only weapon for attack, and the latter will serve me for defence—However, if in summing up, or applying the evidence, I should fall into errors or mistakes, the Court will have the goodness, I hope, to consider them in their true light, and set me right.—Having no claim to abilities, I will endeavour, as a succedaneum thereto, to adopt method.

" The charge exhibited against Col. Gordon, is that of *not having done his duty before the Enemy on the 23d of June, 1780.* This charge does not imply, and therefore it has not been attempted to be supported on the part of the prosecution, that Col. Gordon did not do his duty, during *any part of that day*—The Evidences for the Crown have been produced, to speak only with respect to a *certain period* of it, viz. the space of time between Lieut. Col. Thomas and his company

company being detached into an orchard to the support of Col. Barton's corps, and the brigade of Guards taking possession of the heights of Springfield; and I beg now to call to the recollection of the Court, what each of them has said, with respect to Col. Gordon, during that certain period.

" Lieut. Col. Thomas tells you, that when the brigade of Guards marched in the morning of the 23d of June, 1780, Col. Howard commanded it; Col. Gordon commanded the first battalion, and Col. Schutz the second; and that, between the hours of nine and ten in the morning, he (Col. Thomas) was ordered, with the first company of the first battalion, into an orchard, to support Col. Barton's corps, and was soon followed by Capt. Maitland with the second company; that upon the firing ceasing, he sent Serjeant Curtis to Col. Gordon for orders, but Curtis brought back word, that he could not find Col. Gordon, but that he had seen Col. Howard, who promised that he should have orders; this proves that Col. Howard was then with the brigade of Guards, and consequently commanded it.—Serjeant Major Jarman was equally unsuccesfull in his search for Col. Gordon through the first battalion; and Col. Thomas much more so, after he rejoined the Brigade, as he could not find Col. Gordon in either the first or second battalion. Col. Gordon has however, according to Col. Stewart's evidence, endeavoured to account for his being in the rear, instead of the front of the brigade, at the time that they were making a *forward* move to gain an advantageous position, by saying that he was waiting in the rear

rear for orders ; but he has not attempted, either by himself or any of his Evidences, to prove from whom he expected to receive those orders. Capt. Maitland neither saw Col. Gordon, although he belonged to the battalion under his command, at the time Col. Thomas's or his own company were detached, nor when the brigade of Guards took possession of the heights of Springfield, Lieut. Col. Stewart then leading on the first battalion ; nor in the intermediate time between those two periods.

" There are the testimonies of other Witnesses belonging to the first battalion, and amongst the rest, no less consequential a one (I say consequential, not only from his private good character, but the post he held that day, *that* of Adjutant) than Mr. Wilson, who could not find Col. Gordon with the first battalion, during the period the prosecution points at ; for by such appellation I will presume to distinguish it.

" If Col. Gordon, *supposing* himself, during the absence of twenty minutes, more or less, of Col. Howard (for it cannot, I will venture to assert, be more than an hypothesis, for reasons I shall hereafter offer to the consideration of the Court) to be commanding officer of the whole brigade of Guards, imagined that it lay at his option to be with one or other of the battalions; I will call to the recollection of the Court, the evidence of Capt. Swanton on this tryal, together with those of Lieut. Col. Lovelace and Adjutant Colquhoun, who were with the second battalion on that day, and were called upon by Col. Gordon on the tryal of Lieut. Col. Thomas. Neither Capt. Swanton nor Adjutant Colquhoun

quhoun heard Col. Gordon give any orders to the second battalion ; they did not see Col. Gordon with either of the battalions when they ascended the heights of Springfield, nor, says the former, till six or seven minutes or more after they had formed the line ; and then he was at the bottom of the hill.—Nor did Capt. Swanton see him from the orchard to the time of ascending those heights.—Lieut. Col. Lovelace saw him with the second battalion, on going to take possession of the heights of Springfield, on the left of the *sixth* company, and very soon after the rear of the second battalion had formed on the heights of Springfield. At the time Adjutant Colquhoun saw Col. Gordon with the left of the sixth company of the second battalion, they were at a great distance from the heights of Springfield, and the second battalion passed him.

“ I wish not to quote the evidence partially : I will therefore repeat the testimony of Col. Gordon’s own Witnesses on this tryal.—Col. Barton says, that between the time of the support being sent to him from the Guards, into the orchard, and some British troops, amongst which were Guards, having taken possession of the heights of Springfield, he saw Col. Gordon about six hundred yards from the heights, but supposes he must then have been towards the rear of the Guards.

“ Lieut. Spencer also saw Col. Gordon with the brigade of Guards, about half a mile from the heights of Springfield, and about the fourth, fifth, or sixth division from the rear of the Guards; but Col. Barton does not even know whether there were one or two battalions of Guards.

“ As

" As I have started it as a mere hypothesis, that Col. Gordon knew that Col. Howard had gone from the brigade, and that he (Col. Gordon) was therefore, as commanding officer of the whole, at liberty to choose his position in the brigade; I must observe, that it is declared by Col. Howard, that at the time of his being sent off by Gen. Matthew, no other officers of the brigade knew of it, but Adjutant Wilson, Capt. Maitland, and Major-of-Brigade Collins; and Capt. Maitland, who was present at the time of Col. Howard's being thus sent away, did not see Col. Gordon. How then Col. Gordon knew that Col. Howard had gone for a short space of time from the brigade, and that he (Col. Gordon) had a right to usurp the command of the whole brigade, still remains a *secret*.

" What are the inferences the Court are to draw from these several testimonies? I will, with all due deference, submit some to their consideration.

" Col. Gordon set out from Elizabeth-town, on the 23d of June, as Commandant of the first battalion of Guards: on moving forward, first one, and then a second company of his battalion, was detached; at which periods however no officer of that battalion, not even his Adjutant, saw him even then, or for an hour afterwards. During the absence of this detachment from the battalion under Col. Gordon's command, Col. Howard, the commanding officer of the brigade, is employed on a distant piece of service. Col. Gordon, without its being officially or formally signified to him, or his even knowing, except by instinct, (for there is no proof

of it before this Court) that Col. Howard was absent, looks upon himself as Commandant of the Brigade, and upon that presumption asserts that he was with his *command*. But what do the most favourable Witnesses in his favour say?—Col. Barton deposes, that he saw him with the Guards at some distance from the heights; but, as he does not know whether there was one or two battalions, he cannot say which battalion Col. Gordon was with; but it appeared to him to be towards the rear of the Guards, as the battalion under his (Col. Barton's) command flanked towards the rear of the Guards.—Lieut. Spencer is not positive whether he saw Col. Gordon with the fourth, fifth, or sixth division from the rear of the Guards; but he speaks more pointedly as to the distance he saw him from the heights of Springfield, which he fixes at half a mile.—Col. Lovelace saw Col. Gordon on the left of the sixth company, whilst on their way to the heights of Springfield; and Adjutant Colquhoun deposes having seen him in much the same place, but that they were then at a great distance from the heights, and that the second battalion passed him. I will now submit to your consideration and decision, Gentlemen, without presuming to introduce the most distant suggestion of my own, whether upon the brigade of Guards making a *forward* move, in order to gain a height, the proper post of either the Commandant of the first battalion, or of the Commanding Officer of the whole brigade, was upon the left flank of the *last* company of the second battalion.

“ Before I conclude my observations on the Evidence that has been produced both by Col.

T Gordon

Gordon and myself, with respect to his having, or not having, done his duty, within the period of time, on the 23d of June 1780, to which the prosecution is confined, I cannot but make a remark, which, it is impossible, could have escaped the attention of the Court; that Col. Gordon has not produced either an Officer or Soldier of his own corps to speak of his conduct that day, although he has not confined himself to answer to the particular period of time taken up by the Prosecutor, but has been indulged with an examination of Witnesses to his conduct before and after the time of day alluded to by the Judge Advocate in his prosecution.

" It would have been sufficient, on the part of the Crown, to have shewn, or at least endeavoured to shew, that he was not at a certain time where he ought to have been; and, although accident has thrown in our way an opportunity of finding evidence to prove where he was, I should really have treated the evidence thereon as collateral matter, or as unnecessary to be insisted on, had not the credibility of one of the Witnesses on the part of the prosecution been attacked, and even the names of the Dead not less violently assaulted.—I should be really ashamed, notwithstanding, to go into a recapitulation of all that Thomas Hobbs has told you, as it stands delineated on your proceedings; nor would I touch upon the testimony of Lieut. O'Hara, an Officer who has fallen, by the fate of war, bravely fighting in the cause of his country, had not the credibility of both been attacked, and, with respect to the latter, considering circumstances, in not the most decent terms.

" Thomas

" Thomas Hobbs has told a plain unvarnished tale, of his having seen Col. Gordon, on the 23d of June, 1780, in the rear, long after, not only the brigade of Guards, but the troops in *their* rear, had passed. This poor unlettered man, Gentlemen, after an examination of an hour or two one day, and upwards of four the ensuing one, to events of above two years standing, labouring during the whole time under the consequences, if not the immediate effect, of an intermittent fever, may in some trifling circumstances have deviated from uniformity in his evidence. I do not however say that he has done it; nor, as I observed before, should I have brought forth his evidence, had he not been spoken of by Col. Gordon, in his defence, under the terms of a person *now* come forward, such a *man*, a willing *witness*, and other *pointed* expressions of contempt. Col. Gordon submits to the Court, Hobbs's evidence, as an idle fabricated tale, and makes use, in mentioning this Witness, of the terms *wretched* and *contemptible being*, and that with a peculiarly assumptive mode of expression, which however he does not confine to this part of his defence, as I shall hereafter point out. I will not, I repeat, recapitulate Hobbs's evidence: I will only call to the recollection of the Court, with how much candour, clearness, and circumspection, he delivered himself, under so tedious and trying an examination; and I will submit it to their consideration, whether what Thomas Hobbs has said, is by any means contradicted, in all its material circumstances, by Col. Barton and Mr. Spencer, or whether his testimony does not stand unimpeached; for they

cannot vouch further, than that they saw no wheat-field to the left of the line of march.—I am as jealous of the honour of Thomas Hobbs, although a private soldier, as Col. Gordon can be of *his* honour and reputation. One is an affirmative evidence; the other, a negative one: I leave it to the Court, which ought to prevail on this occasion.

“With respect to Lieut. O’Hara, I should not have disturbed his ashes, had they not been raked up by Col. Gordon. But to what purpose has he attacked the testimony of this dead Witness, at this late day? He has endeavoured to prove, in opposition to him as well as to Hobbs, but by no means, I humbly conceive, fully refuted (as he boldly asserts) their testimony, by those of Col. Barton and Major Milledge. Col. Barton has acknowledged, that the defences against cattle in the province of New Jersey are, in many places, composed of a stone fence, with a rail or two above it, and that the brush growing up about it, is lopped down and interwoven with the rails. Whatever may be the distinction between a *fence* and a *hedge*, I will venture to assert, that there is no great impropriety in supposing that a stranger, cursorily passing through a country, would, upon being asked to describe his route, call this a hedge.

“What Col. Gordon alludes to, when he speaks of the manner in which Mr. O’Hara delivered his testimony, I cannot divine. Mr. O’Hara delivered his testimony before a Court of Justice; and Col. Gordon was present at the time, with full authority to cross-question him, and afterwards make his remarks on his evidence.

The

The severest censure then, would have been less exceptionable than the slightest insinuation now. The evidence of Lieut. O'Hara, with respect to the conduct and behaviour of Col. Gordon, on the 23d of June, 1780, is not so full as it might have been; but to reconcile this, it must be recollect'd, that his examination was taken on the tryal of Lieut. Col. Thomas for aspersing the character of Col. Gordon; an accusation of a very different nature from the one now exhibited against Col. Gordon. Was Mr. O'Hara now standing a living witness at this bar, many questions might, and consequently would be asked him, which were not deemed necessary on the former occasion. And, for the same reason that Lieut. O'Hara was not so fully questioned on that tryal, Thomas Hobbs, and John Barnes, whose name has been introduced on our proceedings, were not produced at all.

" The Witnesses in general differ in speaking of the time that elapsed between Col. Thomas's going into the orchard, and the Guards taking possession of the heights of Springfield; they in general fix it from three quarters of an hour, to an hour and a quarter: I will therefore strike the medium, and call it an hour, more or less — To *this* period of time is the accusation against Col. Gordon, of not having done his duty, confined: a short part of the day, though the only one, as Lieut. Col. Thomas assures us, that the brigade of Guards were engaged with the enemy, and for which (to use Col. Gordon's own words) the gentleman possibly might not be able so particularly to account. Col. Gordon has indeed gone into a wider field of examination of his conduct
on

on the 23d of June, in order to evince the impossibility that a man who in the same day, but a short time before, and a short time after, a particular period, betrayed no improper emotions at real danger, should be terrified where no danger appeared, or the appearances were less alarming; and draws the inference, that the paroxysms of bravery and cowardice can never be supposed to succeed each other, with so much rapidity in the mind of a gentleman.—The Court cannot but recollect, that no evidence has been produced, on the part of the Crown, to prove Col. Gordon's having had a periodical exacerbation of a disease, (for such is the learned Harvey's definition of a paroxysm;) they have pointedly adhered to the simple fact of Col. Gordon's not having done his duty before the enemy, at a certain period, on the 23d of June, 1780: it lay with Col. Gordon, to assign motives for his conduct during that time.

" By the condescension of his Majesty, and with the consent of Col. Gordon, the testimony given on the tryal of Lieut. Col. Thomas, by such as are now dead and dispersed, has been admitted as evidence on this tryal; and Col. Gordon, by the indulgence of the Court, has introduced an affidavit made by Capt. Murray, of the Queen's Rangers, before the Mayor of the city of New-York, and the Assistant Deputy Judge-Advocate.—Written testimony is in general to be avoided, as far as possible, for reasons too numerous and tedious now to recapitulate, but which must be evident to every rational being. All I would observe on those at present in question, is, that an extra-judicial oath, though taken

taken by a man of the strictest veracity, can never be put in competition with the testimony taken in a public Court of Justice, where not only the contending parties, but the members of that Court, had full powers to cross-examine the persons so giving testimony.

" I have promised the Court to touch as little as possible upon collateral matter ; and I hope that I have kept my word.—These observations of mine have been hastily drawn up, and therefore call for your indulgence, both with respect to matter and style ; but I cannot close this reply, without remarking one very extraordinary assertion, (for it is totally devoid of argument or support of any sort) that the present accusation originally flowed not from public spirit and a regard to justice, but the bitter fountain of rancour and private animosity. The public character of Lieut. Col. Thomas is too well established, to be in the least staggered by such an assertion from any individual ; but it lies not with you, Gentlemen, to consider what were the motives that induced Col. Thomas to accuse Col. Gordon, but whether the charge has really been proved.

" To conclude then, I will not, in the dictatorial language of Col. Gordon, say, *I cannot admit of a doubt*, and having thus obviated, and expressions of the like tenor : I will only observe, that the evidence *pro* and *con*, as well as the arguments of each party, being now before you, I commit his Majesty's cause, as Col. Gordon has done his, into your hands, with the same reliance on your discernment and integrity."

Col.

COL. GORDON then desired the indulgence of the Court, to offer a few observations on the reply; which having obtained, he addressed himself to the Court, as follows, *viz.*

" Mr. PRESIDENT, and GENTLEMEN of the
" COURT,

" THE great attention you have paid to the whole evidence offered in this cause, and the observations that must have occurred to you, with respect as well to the species of evidence that has been brought to criminate me, as to the manner in which it has been collected and produced, and also the laboured earnestness that appears in the reply, supercede the necessity of a particular rejoinder to the reply of the Judge Advocate. Besides, I should think myself unpardonable to detain you longer; and therefore I submit to your candour, only begging leave to mention, as the clearest evidence of that *tremendous and intolerable fire* which his Majesty's brigade of Guards sustained on the 23d of June, 1780, That the return of that day (to which I refer) was as follows.

Return of Killed and Wounded in the Brigade
of Guards, 23d June, 1780.

Killed - - - none.

Wounded—

The Honourable Col. COSMO GORDON, a con-
tusion on his thigh.

Four privates, slightly.

This

“ This, Gentlemen, is an exact state of our sufferings on that memorable and well-fought day, which has been described in such glowing colours.”

The COURT, having considered the Evidence for and against the Prisoner, the Hon. COSMO GORDON, together with what he had to offer in his Defence, is of opinion that he is *Not Guilty*: The Court doth therefore honourably *acquit* him (the said Col. GORDON) of the whole, and every part of the Charge exhibited against him.

JOHN CAMPBELL,
PRESIDENT.

STEPHEN P. ADYE,
DEPUTY JUDGE-ADVOCATE.

T H E E N D:



use for such tasks as it presented. The first 100 subjects were telephonists and the remaining participants were telephone operators.

